LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
JAN 27 1954
HAROLD B. WILLEY, Clerk

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1953**

---

**No. 522**

---

**MAX R. MORRIS,**

*Appellant,*

*vs.*

**ANDREW PARKER, JOHN A. REMON, JAMES E. COLLIFLOWER, ET AL.**

---

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

---

## STATEMENT AS TO JURISDICTION

---

JAMES C. TOOMEY,
JOSEPH H. SCHNEIDER,
ALBERT GINSBERG,
*Counsel for Appellant.*

# INDEX

## Subject Index


| | Page |
|---|---|
| Statement as to jurisdiction | 1 |
| Statutory provisions sustaining jurisdiction | 2 |
| Statute involved | 2 |
| Date of judgment and of petition for appeal | 28 |
| Substantial nature of the questions involved and showing of abuse of discretion in dismissing the complaint | 29 |
| Conclusion | 38 |
| Appendix "A"—Opinion of the United States District Court for the District of Columbia | 39 |


## Table of Cases Cited


| | |
|---|---|
| *Adams* v. *Housing Authority of City of Daytona*, 60 So. (2d) 663 | 31 |
| *American Power Company* v. *Securities Exchange Commission*, 329 U.S. 90 | 36, 37 |
| *Brown and Others* v. *The United States*, 263 U.S. 78 | 34 |
| *Fay* v. *Macfarland*, 32 App. D.C. 295 | 36 |
| *Housing Authority of the City of Atlanta* v. *Johnson*, 74 S. C. (2d) 891 | 32 |
| *Latto* v. *United States*, 157 F.(2) 623 | 37 |
| *McCulloch* v. *Maryland*, 4 Wheat. 316 | 35 |
| *Murray* v. *La Guardia*, 291 N.Y. 320 | 33 |
| *Neufield* v. *O'Dwyer*, 79 N.Y.S. 53 | 33 |
| *New York City Housing Authority, In the Matter of the* v. *Andrew Muller*, 270 N.Y. 333 | 32 |
| *United States* v. *Dettra Flag Company*, 86 F. (Supp.) 84 | 37 |
| *United States* v. *Gettysburg Electric Railway Company*, 160 U.S. 668 | 34 |

Page

*United States ex rel. Tennessee Valley Authority* v. *Welch*, 327 U.S. 546 34
*Yakus* v. *United States*, 321 U.S. 414 36

STATUTES AND OTHER AUTHORITIES CITED

Act of Congress of August 2nd, 1946, ("District of Columbia Redevelopment Act of 1945."), 60 Stat. 790, District of Columbia Code, Title 5-701, et seq. (1951), Chapter 7—Housing Redevelopment 1, 2
Section 5-701—General Purposes 2
Section 5-702—Definitions 4
Section 5-705—Establishment and Powers of the Agency 7
Section 5-704—Power to Acquire and Assemble Real Property 8
Section 5-705—General and Project Area Redevelopment Plans 9
Section 5-706—Transfer, Lease, or Sale of Real Property in Project Area for Public and Private Uses 11
Section 5-707—Housing for Displaced Families 15
Section 5-708—Acquisition of Property from Prospective Lessee or Purchaser 15
Section 5-709—Use—Value Appraisals 16
Section 5-710—Protection of Redevelopment Plans 16
Section 5 711—Modification of Redevelopment Plan 18
Section 5-712—Limitation upon Tax Exemption 18
Section 5-713—Administrative Expenditure and Employment 19
Section 5-714—Annual Report 20
Section 5-715—Appropriations Authorized 20
Section 5-716—Acquisition under District of Columbia Alley Dwelling Act 22
Section 5-717—Encouragement and Aid to Private Lending Institutions 23
Section 5-717a—Acceptance of Financial Assistance Authorized 24

Page
Section 5-718—Effect upon Existing Statutes 28
Section 5-719—Separability of Provisions 28
Constitution of the State of New York, Amendment 18 33
Constitution of the United States, Fifth Amendment 33
United States Code, Title 28:
Section 1253 2
Section 2282 1, 2

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

**Civil Action No. 476-53**

MAX R. MORRIS,

*Plaintiff,*

*vs.*

ANDREW PARKER, ET AL.

## STATEMENT AS TO JURISDICTION

In accordance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, appellant files herewith his statement upon which he bases his allegation that the Supreme Court of the United States has appellate jurisdiction to review on appeal the judgment appealed from herein, pursuant to Rule 12, Paragraph 1, to said Court:

1. This is an action brought in the United States District Court for the District of Columbia to enjoin the defendants, the Redevelopment Land Agency, from taking or proceeding to take, the real property of your plaintiff through the processes of eminent domain or otherwise.

The Complaint alleges that the Act of Congress of August 2, 1946, 60 Stat. 790, District of Columbia Code, Title 5-701 et seq. is unconstitutional. A statutory, three-judge Court was convened pursuant to Title 28, U. S. C., Sec.

2282, which Court considered said Complaint and motion to dismiss filed herein, and on November 20, 1953, the said Court entered an order holding that the Act of Congress of August 2, 1946, 60 Stat. 790, District of Columbia Code Title 5-701 et seq. (1951) was constitutional and dismissed the complaint.

**Statutory Provisions Sustaining Jurisdiction**

The statute believed to sustain appellate jurisdiction herein is 28 U. S. C. Sec. 1253 which provides:

> "Sec. 1253. Direct appeals from decisions of three-judge courts.
>
> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. June 25, 1948, c. 646, 62 Stat. 926."

**Statute Involved**

2. The statute of the United States, the validity of which is involved in this appeal, is the District of Columbia Redevelopment Act of 1945, 60 Stat. 790, District of Columbia Code Title 5-701 (1951), which provides as follows:

> "Chapter 7.—Housing Redevelopment
>
> "Sec. 5-701. General purposes.
>
> "It is hereby declared to be a matter of legislative determination that owing to technological and sociological changes, obsolete lay-out, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas, including the use of buildings in alleys as dwellings for human habitation, are injurious to the public health, safety, morals, and welfare, and it is hereby declared

to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in such District; and it is necessary to modernize the planning and development of such portions of such District. The Congress finds that the foregoing cannot be accomplished by the ordinary operations of private enterprise alone without public participation in the planning and in the financing of land assembly for such development; and that for the economic soundness of this redevelopment and the accomplishment of the necessary social and economic benefits, and by reason of the close relationships between the development and uses of any part of an urban area with the development and uses of all other parts the sound replanning and redevelopment of an obsolescent or obsolescing portion of such District cannot be accomplished unless it be done in the light of comprehensive and coordinate planning of the whole of the territory of the District of Columbia and its environs; and that this comprehensive planning and replanning should proceed vigorously without delay; and to these ends it is necessary to enact the provisions hereinafter set forth; and that the acquisition and the assembly of real property and the leasing or sale thereof for redevelopment pursuant to a project area redevelopment plan, all as provided in sections 5-701, is hereby declared to be a public use. (Aug. 2, 1946, 60 Stat. 790, ch. 736, § 2.)

"§ 5-702. Definitions.

"The following terms, whenever used or referred to in sections 5-701 to 5-719, shall, for the purposes of sections 5-701 to 5-719 and unless a different intent clearly appears from the context, be construed as follows:

"(a) The term 'Agency' means the District of Columbia Redevelopment Land Agency established by section 5-703.

"(b) 'District Commissioners' means the Board of Commissioners of the District of Columbia.

"(c) 'Housing' includes housing, dwelling, habitation, and residence.

"(d) 'Housing project' means any low-rent housing (as defined in the United States Housing Act of 1937, U. S. C., title 42, ch. 8), the development or administration of which is assisted by the United States Housing Authority.

"(e) 'Land' includes bare or vacant land, or the land under buidings, structures, or other improvements; also water and land under water. When employed in connection with 'use,' as for instance, 'use of land' or 'land use,' 'land' also includes buildings, structures, and improvements existing or to be placed thereon.

"(f) 'Low-rent housing' means safe and sanitary housing within the financial reach of families of comparatively low income and, as a guide for the standard of rental to be used as a maximum at the time of the enactment of this law but not necessarily thereafter, it is specified that such housing shall be rented at not more than $13 per room per month, excluding utilities.

"(g) 'Lessee' includes the successors or assigns and successors in title of any lessee.

"(h) 'Planning Commission' means the National Capital Park and Planning Commission.

"(i) 'Proceeds' means the money proceeds of sales or transfers by the Agency; and 'net proceeds' the

gross proceeds after deducting commissions or other expenses of the sales or transfers.

"(j) 'Project area' is an area of such extent and location as may be adopted by the Planning Commission and approved by the District Commissioners after public hearing as an appropriate unit of redevelopment planning for a redevelopment project separate from the redevelopment projects for other parts of the District of Columbia. In the provisions of this Act relating to lease or sale by the Agency, for abbreviation 'project area' is used for the remainder of the project area after taking out those pieces of property which in accordance with section 7-706(a) shall have been or are to be transferred for public uses.

"(k) 'Public low-rent housing' means low-rent housing, constructed by a public agency for families of low income, at rentals which (including the value or cost to tenants of heat, light, water and cooking fuel) shall not exceed one-fifth of the highest net family income of families eligible for tenancy in such housing, as herein provided. The dwellings in public low-rent housing shall be available solely for such families of low income whose net family income does not exceed the maximum net family income falling within the lowest 20 per centum by number of all family incomes in the District of Columbia, as such maximum net family income shall have been determined, or from time to time redetermined after public hearing, by the District Commissioners. At the end of one year after the enactment of sections 5-701 to 5-719 this definition shall be reexamined by the Commissioners for the District of Columbia and a public hearing shall be held thereon to determine whether administrative or interpretive difficulties or unsatisfactory progress in the provision of low-rent housing requires a modification thereof. Upon the conclusion of such hearing the Commissioners shall forthwith make recommendations to Congress whether said definition should be modified and, if so, to what extent.

"(l) 'Purchaser' includes the successors or assigns and successors in title of any purchaser.

"(m) 'Real Property' includes land; also includes land together with the buildings, structures, fixtures, and other improvements thereon; also includes liens, estates, easements, and other interests therein; and also includes restrictions or limitations upon the use of land, buildings, or structures other than those imposed by exercise of the police power.

"(n) 'Redevelopment' means replanning, clearance, redesign, and rebuilding of project areas, including open-space types of uses, such as streets, recreation and other public grounds, and spaces around buildings, as well as buildings, structures, and improvements, but not excluding the continuance of some of the existing buildings or uses in a project area. For the purposes of sections 5-701 to 5-719 ,'redevelopment' also includes the replanning, redesign, and original development of undeveloped areas which, by reason of street lay-out, lot lay-out, or other causes, are backward and stagnant and therefore blighted and for which replanning and land assembly are deemed necessary as a condition of sound development.

"(o) 'Redevelopment company' means a private or public corporation or body corporate, whether organized under the District of Columbia Code or the laws of the United States or any State, or an unincorporated association, trust, or other legal entity, which, by virtue of the statutes, charter, articles of incorporation, instruments of trust, or other instrument defining its powers, has the power to become a lessee or purchaser of a project area and to conform to the provisions of this Act and to perform fully and comply with the terms of the lease or sale of such area or part thereof to it.

"(p) 'Rentals' means the rents specified in a lease to be paid by the lessee to the Agency; 'net rentals' means gross rentals after deducting taxes payable by the Agency.

"(q) 'Revenues' means the revenues or income received by the Agency from real property while held by

it and operated or temporarily let by it and not yet leased, transferred, or sold by it; and 'net revenues' means the gross revenues after deducting repair, management, maintenance, insurance, and other operating expenses and taxes paid or payable by the Agency.

"(r) 'Substandard housing conditions' means the conditions obtaining in connection with the existence of any dwelling, or dwellings, or housing accommodations for human beings, which because of lack of sanitary facilities, ventilation, or light, or because of dilapidation, overcrowding, faulty interior arrangement, or any combination of these factors, is in the opinion of the Commissioners detrimental to the safety, health, morals, or welfare of the inhabitants of the District of Columbia (Aug. 2, 1946, 60 Stat. 791, ch. 736, § 3).

"§ 5-703. Establishment and powers of the Agency.

"(a) The District of Columbia Redevelopment Land Agency is hereby established and shall be composed of five members. Two members shall be appointed by the President and three members shall be appointed by the District Commissioners, subject to confirmation by the Senate. One of the Presidential appointees may be an official of the United States Government; one appointee of the District Commissioners may be an official of the District of Columbia Government. Each nonofficial appointee shall have been a resident of the District of Columbia for at least the five next preceding years, and shall have been engaged or employed during such time in private business or industry, or the private practice of a profession, in the District of Columbia. The terms of members shall be for five years, except that the first appointment of one of the Presidential appointees shall be for three years and the other for five years; one of the first appointments of the District Commissioners shall be for four years, one for two years, and one for one year: Provided, That in the event any member shall cease to hold the official position held by him at the time of his designation or appointment, such cessation shall be deemed to create a vacancy in his membership on the Agency,

such vacancy, as well as all vacancies from other causes, to be filled by designation or appointment by the President or District Commissioners for the unexpired term. The members shall receive no salary as such, but those members who hold no other salaried public position shall be paid a per diem of $20 for each day of service at meetings or on the work of the Agency.

"(b) The said District of Columbia Redevelopment Agency is hereby made a body corporate of perpetual duration, the powers of which shall be vested in and exercised by the board of directors thereof, consisting of the five members thereof appointed as above set forth. It shall have the power to adopt, alter, and use a corporate seal which shall be judicially noticed; to make contracts; to sue and be sued, to complain and defend in its own name in any court of competent jurisdiction, State, Federal, or municipal; to make, deliver, and receive deeds, leases, and other instruments and to take title to real and other property in its own name; to adopt, prescribe, amend, repeal, and enforce bylaws, rules and regulations for the exercise of its powers under sections 5-701 to 5-719 or governing the manner in which its business may be conducted and the powers granted to it by sections 5-701 to 5-719 may be exercised and enjoyed, including the selection of its chairman and other officers, together with provisions for such committees and the functions thereof as it may deem necessary for facilitation of its work; to protect and enforce any right conferred upon it by sections 5-701 to 5-719, or otherwise acquired, including any lease, sale, or other agreement made by or with it; and in general to exercise all the powers necessary or proper to the performance of its duties and functions under sections 5-701 to 5-719 (Aug. 2, 1946, 60 Stat. 793, ch. 736, § 4).

§ 5-704. Power to acquire and assemble real property.

"(a) Subject to and in accordance with the procedures, conditions, and other provisions of sections 5-701

to 5-719, the Agency is hereby granted the power to further the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight and for that purpose to acquire and assemble real property by purchase, exchange, gift, dedication, or eminent domain, and including the power to rent, maintain, manage, operate, repair, clear, transfer, lease, and sell such real property, but excluding the power to build new structures thereon (other than the improvements mentioned in section 5-706 (i) or the power to enlarge, extend, or make major structural improvements of existing buildings).

"(b) Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with the procedural provisions of sections 16-619 to 16-644. The title to properties acquired under sections 5-701 to 5-719 shall be taken by and in the name of the Agency and proceedings for condemnation or other acquistion of property shall be brought by and in the name of the Agency. (Aug. 2, 1946, 60 Stat. 793, ch. 736, § 5.)

"§ 5-705. General and project area redevelopment plans.

"(a) The Planning Commission is hereby directed to make and, from time to time, develop a comprehensive or general plan of the District of Columbia, including the appropriate maps, charts, tables, and descriptive, interpretative, and analytical matter, which plan is intended to serve as a general framework or guide of development within which the various project areas may be more precisely planned and calculated, and which comprehensive or general plan shall include at least a land-use plan which designates the proposed general distribution and general locations and extents of the uses of the land for housing, business, industry, recreation, education, public buildings, public reservations, and other general categories of public and private uses of the land.

"(b) For the exercise of the powers granted to the

Agency by sections 5-701 to 5-719 for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

"(1) Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the District Commissioners, and approval thereof by said Commissioners.

"(2) Adoption by the Planning Commission and submission to, and, after a public hearing thereon, approval by the District Commissioners, of the redevelopment plan of the project area which shall contain a site and use plan for the redevelopment of the area, including the approximate locations and extents of the land uses proposed for and within the area, such as public buildings, streets, and other public works and utilities, housing, recreation, business, industry, schools, public and private open spaces, and other categories of public and private uses. Such plan shall also contain specifications of standards of population density and building intensity. Any such plan may also specify, by means of specification of maximum rentals or other basis, the amount or character or class of any low-rent housing for which the area or part thereof is proposed to be redeveloped.

"(c) In relation to the location and extent of public works and utilities, public buildings, and other public uses in the general plan or in a project area plan, the Planning Commission is directed to confer with the Federal and District public officials, boards, authorities, and agencies under whose administrative jurisdictions such uses respectively fall. In the project area planning, the Planning Commission is directed to consult from time to time with the Agency, and the Agency shall be free at all times to submit to the Planning Commission suggestions regarding both the location and extent of project areas and the use and site plans of project areas.

"(d) After a project area redevelopment plan shall have been adopted by the Planning Commission and approved by the District Commissioners, the Planning Commission shall forthwith certify said plan to the Agency, whereupon said Agency shall proceed to the exercise of the powers granted to it in sections 5-701 to 5-719 for the acquisition and assembly of the real property of the area. Following such certification, no new construction shall be authorized by the District Commissioners in such area, including substantial remodeling or conversion or rebuilding, enlargement or extension or major structural improvements on existing buildings, but not including ordinary maintenance or remodeling or changes necessary to continue the occupancy. (August 2, 1946, 60 Stat. 794, ch. 736, § 6.)

§ 5-706. Transfer, lease, or sale of real property in project area for public and private uses.

"(a) After the real property in the project area shall have been assembled by the Agency, the Agency shall have the power to transfer to and shall at a practicable time or times transfer by deeds to the United States or to the District of Columbia, or to the appropriate Federal or District public body, department, or agency, those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public uses (other than public housing) falling within the construction or administrative jurisdiction of Federal or District agencies, such as streets and other utilities and works. Federal and District public buildings, public recreational spaces, and schools. The Federal agencies and the public agencies of the District of Columbia are hereby empowered, respectively, to acquire real property from the Agency for the uses respectively specified in the project area plan and to pay for same out of their funds duly appropriated for such acquisition. Excepting for such property as may be transferred by dedication, gift, or exchange, the transferee agency shall pay to the Agency such sum as may be agreed upon or, in the absence of agreement, as may be fixed

by the Chief Justice of the District Court of the United States for the District of Columbia.

"(b) The Agency shall have the power to lease or sell the remainder of the project area as an entirety to a redevelopment company or to an individual or a partnership. Said remainder may include streets or parts thereof which in accordance with the plan are to be closed or vacated or other than publicly owned properties; and the Federal and District departments and agencies are empowered to transfer said spaces or properties to the Agency for such sums or other consideration as may be agreed upon.

"(c) Any such lease or sale may be made without public bidding but only after a public hearing, after ten days' public notice, by the Agency upon the proposed lease or sale and the provisions thereof.

"(d) The term of any such lease shall be fixed by the Agency and the instrument of lease may provide for renewals upon reappraisals and with rentals and other provisions adjusted to such reappraisals. Every such lease or sale shall provide that the lessee or purchaser shall carry out or cause to be carried out the approved project area redevelopment plan or approved modifications thereof and that no use shall be made of any land or real property included in the lease or sale nor any building or structure erected thereon which does not conform to such approved plan or approved modifications thereof. In the instrument, or instruments, of lease or sale, the Agency may include such other terms, conditions, and provisions as in its judgment will provide reasonable assurance of the priority of the obligations of any other obligations of the lessee or purchaser and the lease or sale and of conformance to the plan over also assurance of the financial and legal ability of the lessee or purchaser or carry out and conform to the plan and the terms and conditions of the lease or sale; also, such terms, conditions, and specifications concerning buildings, improvements, subleases, or tenancies, maintenance and management, and any other related matters as the Agency may reason-

ably impose or approve, including provisions whereby the obligations to carry out and conform to the project area plan shall run with the land. In the event that maximum rentals to be charged to tenants of housing be specified, provision may be made for periodic reconsideration of such rental bases, with a view to proposing modification of the project area plan with respect to such rentals.

"(e) Until the Agency certifies that all building constructions and other physical improvements specified to be done and made by the purchaser of the area have been completed, the purchaser shall have no power to convey the area, or any part thereof, without the consent of the Agency; and no such consent shall be given unless the grantee or mortgagee of the purchaser obligates itself or himself by written instrument to the Agency to carry out that portion of the redevelopment plan which falls within the boundaries of the conveyed property, and also that the grantee, his or its heirs, representatives, successors, and assigns, shall have no right or power to convey, lease, or let the conveyed property or any part thereof or erect or use any building or structure erected thereon free from the obligation and requirement to conform to the approved project area redevelopment plan or approved modifications thereof.

"(f) In lieu of the lease or sale of a project area as an entirety, the Agency shall have the power to lease or sell parts of such area separately to individuals, partnerships, or redevelopment companies. Any such sale or lease of a part or parts of a project area shall be fully subject to the provisions of subsections (c), (d), and (e) of this section.

"(g) No lease or sale of any project area or portion thereof shall be made by the Agency to any public redevelopment company unless the terms of such lease or sale shall provide greater compensation to the Agency than any offer or combination of offers based on substantially the same area and substantially the same redevelopment plan which shall be received from any

responsible private sources (eligible as purchasers or lessees under Sections 5-701 to 5-719) within a reasonable announced period of time (not less than thirty days) after the public hearing on such proposed lease or sale. It is the intent of this provision that private enterprise as represented through a responsible private redevelopment company, individual, or partnership shall be given a preference over any public redevelopment company in such lease or sale provided such preference can be given, in the judgment of the Agency, consistently with the protection of the public interest and consistently with a purpose to resort to a public redevelopment company only in the event that private enterprise shall not reasonably be available for the development of the project area or the part thereof under consideration.

"(h) The Agency may itself demolish any existing structure or clear the area or any part thereof, or may specify the demolition and clearance to be performed by a lessee or purchaser within a reasonable time after such lease or purchase. The Agency may specify a reasonable time schedule and reasonable conditions for the construction of buildings and other improvements by a lessee or purchaser: Provided, That any such time schedule or condition shall be specified prior to the offering of the area or part thereof for lease or sale, and shall be equally binding upon any purchaser or lessee, public or private. The cost of demolition or clearance made by the Agency pursuant to this subsection shall be treated as an item of cost of the acquisition of the area.

"(i) In order to facilitate the lease or sale of a project area or, in the event that the lease or sale is of parts of an area, then to facilitate the leases or sales of such parts, the Agency shall have the power to include in the cost payable by it the cost of the construction of local streets and sidewalks within the area or of grading and other local public surface or subsurface facilities necessary for shaping the area as the site of the redevelopment of the area. The Agency may ar-

range with the appropriate Federal or District agencies for the reimbursement of such outlays from funds or assessments raised or levied for such purposes. (Aug. 2, 1946, 60 Stat. 795, ch. 736, § 7.)

"§ 5-707. Housing for displaced families.

"(a) Prior to approval by the District Commissioners, pursuant to subparagraph (2) of section 5-705 (b), of any redevelopment plan, the District Commissioners shall satisfy themselves (and shall so state at the public hearing required by such subparagraph) that decent, safe, and sanitary housing, substantially equal in quantity to the number of substandard dwelling units to be removed or demolished within the project area, under the proposed redevelopment plan, are available or will be provided (by construction pursuant to the redevelopment plan, or otherwise) in localities, and at rents or prices, within the reach of the low-income families displaced or to be displaced (temporarily or permanently), pursuant to the redevelopment plan, from the project area.

"(b) Families displaced by slum clearance or redevelopment under Sections 5-701 to 5-719 shall be given preference as tenants to fill vacancies occurring in housing owned or operated within the District of Columbia by Federal or District of Columbia governmental agencies until appropriate housing is available to such families. (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 8.)

"§ 5-708. Acquisition of property from prospective lessee or purchaser.

"As an aid in the acquisition of the real property of a project area, the Agency may accept a fund or, at an agreed value, any parcel or parcels of property within such area, from any redevelopment company or partnership or individual, subject to a provision that in the event the supplier of any such fund or the conveyor of such property shall become the purchaser of the project area or any part or parts thereof such fund

or the agreed value of such property shall be credited on the purchase price of such area or part thereof and if there be an excess above the cost of acquisition of the area such excess shall be returned, and that in the event that such supplier or conveyor does not become the purchaser of such area or any part thereof, the amount of the fund or the agreed value of such property (as the case may be) shall be paid to such supplier or conveyor. (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 9.)

"§ 5-709. Use-value appraisals.

"After the Agency shall have assembled and acquired the real property [1] of a project area, it shall, as an aid to it in determining the rentals and other terms upon which it will lease or the price at which it will sell the area or parts thereof, place a use-value upon each piece or tract of land within the area which, in accordance with the plan, is to be used for private uses or for low-rent housing, such use-value to be based on the planned use; and, for the purpose of this use valuation, it shall cause a use-value appraisal to be made by two or more land-value experts employed by it for the purpose, but nothing contained in this section shall be construed as requiring the Agency to base its rentals or selling prices upon such appraisal.

"The aggregate use value placed, for purposes of lease or sale, upon all land, within a particular project area, leased or sold by the Agency pursuant to sections 5-701 to 5-719 shall be not less than one-third of the aggregate cost to the Agency of acquiring all such land (excluding the cost of old buildings destroyed and the demolition and clearance thereof). (Aug. 2, 1946, 60 Stat. 797, ch. 736, § 10.)

"§ 5-710. Protection of redevelopment plan.

"(a) Previous to the execution and delivery by the Agency of a lease or conveyance to a redevelopment company or previous to the consent by the Agency to

[1] So in original.

an assignment or conveyance by a lessee or purchaser to a redevelopment company, the articles or certificate of incorporation or association or charter or other basic instrument of such company shall contain provisions so defining, limiting, and regulating the exercise of the powers of the company that neither the company nor its stockholders, its officers, its directors, its members, its beneficaries, its bondholders, or other creditors or other persons shall have any power to amend or to effect the amendment of the terms and conditions of the lease or the terms and conditions of the sale without the consent of the Agency or, in relation to the project area redevelopment plan, without the approval of any proposed modification in accordance with the provisions of section 5-711; and no action of stockholders, officers, directors, bondholders, creditors, partners or other persons, nor any reorganization, dissolution, receivership, consolidation, foreclosure, or any other change in the status or obligation or any redevelopment company, partnership, or individual in any litigation or proceeding in any Federal or other court shall effect any release or any impairment or modification of the lease or terms of sale or of the project area redevelopment plan unless such consent or approval be obtained.

"(b) Redevelopment corporations may be organized under the provisions of chapter 2 of title 29; and said corporations shall have the power to be redevelopment companies under sections 5-701 to 5-719 and to acquire and hold real property for the purposes set forth in sections 5-701 to 5-719 and to exercise all other powers granted to redevelopment companies in sections 5-701 to 5-719 subject to the provisions, limitations, and obligations set forth in sections 5-701 to 5-719.

"(c) A redevelopment company individual, or partnership to which any project area or part thereof is leased or sold under sections 5-701 to 5-719 shall keep books of account of its operations of or transactions relating to such area or part thereof entirely separate and distinct from its or his accounts of and for any

other project area or part thereof or any other real property or enterprise; and no lien or other interest shall be placed upon any real property in said area to secure any indebtedness or obligation of the redevelopment company, individual, or partnership incurred for or in relation to any property or enterprise outside of said area. (Aug. 2, 1946, 60 Stat. 798, ch. 736, § 11.)

"§ 5-711. Modification of redevelopment plans.

"An approved project area redevelopment plan may be modified at any time or times; Provided, That any such modification as it may affect an area or part thereof which has been sold or leased shall not become effective without the consent in writing of the purchaser or lessee thereof: Provided further, That such modification may be effected only through adoption by the Planning Commission and subsequent submission to and approval by the District Commisisoners, as hereinafter provided. Before approval, the District Commissioners shall hold a public hearing on the proposed modification, notice of the time and place of which shall be given by mail sent at least ten days prior to the hearing to the then owners of the real properties in the project area and of the real properties immediately adjoining or across the street from the project area. The District Commissioners may refer back to the Planning Commission any project area redevelopment plan, project area boundaries, or modification submitted to it, together with their recommendation for changes in such plan, boundaries, or modification, and, if such recommended changes be adopted by the Planning Commission and be in turn approved by the District Commissioners, the plans, boundaries, or modification as thus changed shall be and become the approved plan, boundaries, or modification. (Aug. 2, 1946, 60 Stat. 798, ch. 736, § 12.)

"§ 5-712. Limitation upon tax exemption.

"Nothing contained in sections 5-701 to 5-719 shall be construed to authorize or require the exemption of

any real property from taxation. No real property acquired by the Agency under sections 5-701 to 5-719 shall be exempt from taxation by reason of such acquisition or by reason of the holding thereof by the Agency; and, in the case of any piece of real property, which, under the project a[illegible] redevelopment plan, is designated to be used for Federal or District or other tax-exempt uses, the exemption of such real property from taxation granted by or in sections 47-801a to 47-801b, or other statute, shall not commence until title thereto shall have been transferred from the Agency to the United States or the District of Columbia or to a Federal or District public agency as provided in section 5-706 or sold or leased to a public redevelopment company or other public corporation or tax-exempt agency and may thereby become exempt from taxation by reason of the provisions of statutes other than sections 5-701 to 5-719; the intention being that ownership or operation by the Agency in the exercise of its power under sections 5-701 to 5-719 shall not, in and of itself, produce tax exemption. (Aug. 2, 1946, 60 Stat. 799, ch. 736, § 13.)

"§ 5-713. Administrative expenditure and employment.

"The Agency is hereby authorized and empowered—

"(a) to procure services or make any purchase without regard to the provisions of section 3709 of the Revised Statutes, provided the aggregate amount involved is not more than $100;

"(b) to secure planning, land economics and valuation services, and other expert services related to the acquisition and disposition of real property, by contract or otherwise, at rates of pay or fees not to exceed those usual for similar services elsewhere, and without regard to the Classification Act of 1923, and to section 3709 of Revised Statutes, as amended; Provided, That this exemption shall not apply to persons employed by the Agency on a permanent basis;

"(c) to appoint and employ such officers and employees as it may find necessary for the proper performance of its duties under sections 5-701 to 5-719 and

to prescribe their authorities, duties, responsibilities, and tenures and fix their compensations; such appointments and employments to be made in conformance with the civil-service laws and the Classification Act of 1923, as amended; and

"(d) to make such expenditures, subject to audit under the general law, for the acquisition and maintenance of adequate vehicles, furnishings, equipment, supplies, books of reference, directories, periodicals, newspapers, printing and binding, and for such other expenses as may from time to time be found necessary for the proper administration of sections 5-701 to 5-719. (Aug. 2, 1946, 60 Stat. 799, ch. 736, § 14.)

"§ 5-714. Annual report.

"On or before the last day of September of each year the Agency shall make an annual report to Congress of its operations and expenditures for the immediately preceding fiscal year, said report to include a financial balance sheet of its entire operations hereunder, and a recital in such particularity as is feasible of what the Agency proposes to do during the next succeeding fiscal year. The Agency shall make such other and further reports, in such form and at such times as the Congress by concurrent resolution shall require. (Aug. 2, 1946, 60 Stat. 800, ch. 736, § 15.)

"§ 5-715. Appropriations authorized.

"(a) There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, whatever amounts are necessary to the Planning Commission, in addition to other funds which may be appropriated to it or private funds made available to it (the acceptance of which is hereby authorized), for the making or modification of a general or comprehensive plan and the making or modification of project area redevelopment plans and for surveys as authorized in sections 5-701 to 5-719, and other administrative expenses in connection therewith. The Commission is also authorized to re-

ceive any grants that the Congress may appropriate for said purposes to the various States and municipalities and the District of Columbia.

"(b) There is further authorized to be appropriated out of any moneys in the Treasury of the United States not otherwise appropriated, the sum of $20,000,000, which sum shall be placed to the credit of a special trust fund to be established for the purposes hereinafter set out. There shall be deposited in the Treasury of the United States and credited to said special trust fund all revenues, rentals, proceeds, and other funds received by the Agency. The said special trust fund is hereby made available to the Agency for the purpose of acquiring real property and performing any act required or authorized by sections 5-701 to 5-719. The Agency shall from time to time submit to the District Commissioners estimates of amounts for the reasonable and necessary expenses of the Agency, including personal services, and such amounts as may be approved by the District Commissioners shall be available from the said special trust fund for such expenses.

"(c) As of the last day of the tenth fiscal year beginning after approval of sections 5-701 to 5-719, or as of such later date as may be fixed by the Congress, there shall be transferred and credited to miscellaneous receipts of the United States the balance in the said special trust fund after deducting (a) such amount as may be necessary for the completion of any approved project the acquisition of which has been begun and (b) such amount for operating expenses of the Agency for one year as may be approved by the District Commissioners. If the balance so transferred and credited be insufficient to reimburse the United States for appropriations made pursuant to paragraph (b) of this section, then an amount equal to 50 per centum of the deficit shall be payable to the United States from revenues of the District of Columbia in installments of equal amounts for each of ten years. The District Commissioners shall include in their annual estimates of appropriations items for the payment of such in-

stallments. The aforesaid deficit shall be determined by deducting from the total of said appropriations an amount equal to (a) the fund transferred and credited to miscellaneous receipts of the United States, (b) the cost to the Agency of the real property owned by it on said date, and (c) the reserve for completion of approved projects. All subsequent proceeds, revenues, and rentals from said real property shall be credited to the said special trust fund, to be disposed of as the Congress may direct. (Aug. 2, 1946, 60 Stat. 800, ch. 736, § 16.)

"§ 5-716. Acquisition under District of Columbia Alley Dwelling Act.

"From and after the termination of the period of one year, beginning with the date of the approval of sections 5-701 to 5-719, all authority granted by sections 5-103 to 5-116, to acquire, by purchase, condemnation, or gift, lands, buildings and structures, or any interest therein, is hereby transferred to and vested in the Agency created by sections 5-701 to 5-719. During said one-year period said authority may be exercised by the National Capital Housing Authority only for projects that shall have been approved by the Planning Commission and the District Commissioners: Provided, however, That failure of the Planning Commission or the District Commissioners to approve or disapprove in writing within sixty days after the submission by the National Capital Housing Authority shall be equivalent to a formal approval. Nothing contained in sections 5-103 to 5-116 or in sections 5-701 to 5-719 shall be interpreted as precluding the inclusion at any time of any alley or inhabited alley or alley dwelling or dwelling or square containing an inhabited alley in a project area to be planned, acquired, and disposed of under the provisions of sections 5-701 to 5-719. Any real property acquired by the Agency under the authority of sections 5-103 to 5-116 may be transferred or may be sold or leased by the Agency as provided in sections 5-701 to 5-719 for real property ac-

quired for a project area redevelopment. The National Capital Housing Authority is hereby declared to be a redevelopment company and is hereby granted the power to purchase or lease redevelopment areas or parts thereof from the Agency in accordance with the provisions of sections 5-701 to 5-719. The National Capital Housing Authority shall keep regular books of account in accordance with standard auditing practices, covering all properties operated by it, showing detailed construction costs, management costs, repairs, maintenance, other operating costs, rents, subsidies, grants, allowances and exemptions; such books shall be subject to annual audit by the General Accounting Office; and the annual report of the National Capital Housing Authority shall include a summary of all transactions covered by such books and shall be made available to the public upon request. (Aug. 2, 1946, 60 Stat. 801, ch. 736, § 17.)

"§ 5-717. Encouragement and aid to private lending institutions.

"(a) To provide for and to facilitate the improvement of housing and other improved real estate in the District of Columbia, Federal savings and loan associations of the District of Columbia and building associations and building and loan associations operating under the laws of the District of Columbia are authorized, notwithstanding any other provision of law, to make loans for the improvement of homes or other improved real estate in the District of Columbia without security: Provided, That no such loan without security shall be made in a sum in excess of $2,000.

"(b) Any financial institution or other lending organization operating under the laws of the United States or the District of Columbia is authorized, notwithstanding any other law or regulation, to make loans to redevelopment corporations to finance the improvement of any project area as provided in sections 5-701 to 5-719. Any life-insurance company organized under the laws of the District or formed or organized

under an Act of Congress is authorized, notwithstanding any other provision of law, to make loans or advances for the purpose of making repairs, alterations, additions, or improvements to homes or other buildings on improved real estate upon which it then holds a first lien to secure a loan previously made, without additional security: Provided, That no such loan or advance shall be made in a sum in excess of $2,000: And provided further, That the amount of such loan or advance when added to the balance due on the original indebtedness shall not exceed the amount originally secured by the first lien. (Aug. 2, 1946, 60 Stat., 801, ch. 736 § 19.)

§ 5-717a. Acceptance of financial assistance authorized.

"(a) As an alternative method of financing its authorized operations and functions under the provisions of this chapter (in addition to that provided in section 5-815), the Agency is hereby authorized and empowered to accept financial assistance from the Housing and Home Finance Administrator (hereafter in this section referred to as the Administrator), in the form of advances of funds, loans, and capital grants pursuant to title I of the Housing Act of 1949, to assist the Agency in acquiring real property for redevelopment of project areas and carrying out any functions authorized under this chapter for which advances of funds, loans, or capital grants may be made to a local public agency under title I of the Housing Act of 1949, and the Agency, subject to the approval of the District Commissioners and subject to such terms, covenants, and conditions as may be prescribed by the Administrator pursuant to title I of the Housing Act of 1949, may enter into such contracts and agreements as may be necessary, convenient, or desirable for such purposes.

"(b) Subject to the approval of the District Commissioners, the Agency is authorized to accept from the Administrator advances of funds for surveys and plans in preparation of a project or projects authorized by this chapter which may be assisted under title I of

the Housing Act of 1949, and the Agency is authorized to transfer to the Planning Commission so much of the funds so advanced as the District Commissioners shall determine to be necessary for the Planning Commission to carry out its functions under this chapter with respect to the project or projects to be assisted under Title I of the Housing Act of 1949.

"(c) The District Commissioners are authorized to include in their annual estimates of appropriations items for administrative expenses which, in addition to loan or other funds available therefor, are necessary for the Agency in carrying out its functions under this section.

"(d) Notwithstanding the limitation contained in the last sentence of section 110 (d) or in any other provision of title I of the Housing Act of 1949, the Administrator is authorized to allow and credit to the Agency such local grants-in-aid as are approvable pursuant to said section 110 (d) with respect to any project or projects undertaken by the Agency under a contract or contracts entered into under this section and assisted under title I of the Housing Act of 1949. In the event such local grants-in-aid as are so allowed by the Administrator are not sufficient to meet the requirements for local grants-in-aid pursuant to title I of the Housing Act of 1949, the District Commissioners are hereby authorized to enter into agreements with the Agency, upon which agreements the Administrator may rely, to make cash payments of such deficiencies from funds of the District of Columbia. The District Commissioners shall include items for such cash payments in their annual estimates of appropriations, and there are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the amounts necessary to provide for such cash payments. Any amounts due the Administrator pursuant to any such agreements shall be paid promptly from funds appropriated for such purpose.

"(e) All receipts of the Agency in connection with any project or projects financed in accordance with this

section with assistance under title I of the Housing Act of 1949, whether in the form of advances of funds, loans or capital grants made by the Administrator to the Agency, or in the form of proceeds, rentals, or revenues derived by the Agency from any such project or projects, shall be deposited in the Treasury of the United States to the credit of a special fund or funds, and all moneys in such special fund or funds are hereby made available for carrying out the purposes of this chapter with respect to such project or projects, including the payment of any advances of funds or loans, together with interest thereon, made by the Administrator or by private sources to the Agency. Expenditures from such fund shall be audited, disbursed, and accounted for as are other funds of the District of Columbia.

"(f) With respect to any project or projects undertaken by the Agency which are financed in accordance with this section with assistance under title I of the housing Act of 1949—

"(1) sections 5-702 (f), 5-702 (k), and 5-706 (g) and the last sentence of section 5-705 (b) (2) shall not be applicable to those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended;

"(2) the site and use plan for the redevelopment of the area, included in the redevelopment plan of the project area pursuant to section 5-705 (b) (2) shall include the approximate extent and location of any land within the area which is proposed to be used for public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended;

"(3) notwithstanding any other provisions of this chapter, the Agency, pursuant to section 5-706 (a), shall have power to transfer to and shall at a practicable time or times transfer by deeds to the National Capitol Housing Authority those pieces of real property which, in accordance with the approved project

area redevelopment plan, are to be devoted to public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended, and, in accordance with the requirements of section 107 of the Housing Act of 1949, the National Capital Housing Authority shall pay for the same out of any of its funds available for such acquisition.

"(g) It is the purpose and intent of this section to authorize the District Commisisoners and the appropriate agencies operating within the District of Columbia to do any and all things necessary to secure financial aid under title I of the Housing Act of 1949. The District of Columbia Redevelopment Land Agency is hereby declared to be a local public agency for all of the purposes of title I of the Housing Act of 1949. As such a local public agency for all of the purposes of title I of the Housing Act of 1949, the Agency is also authorized to borrow money from the Administrator or from private sources as contemplated by title I of the Housing Act of 1949, to issue its obligations evidencing such loans, and to pledge as security for the payment of such loans, and the interest thereon, the property, income, revenues, and other assets acquired in connection with the project or projects financed in accordance with this section with assistance under title I of the Housing Act of 1949, but such obligations or such pledge shall not constitute a debt or obligation of either the United States or of the District of Columbia.

"(h) Nothing contained in this section or in any other section of this chapter shall relieve the Administrator of his responsibilities and duties under section 105 (c) or any other section of the Housing Act of 1949. The Administrator shall not enter into any contract of financial assistance under title I of this chapter with respect to any project of the District of Columbia Redevelopment Land Agency for which a budget estimate of appropriation was transmitted pursuant to law and for which no appropriation was made by the Congress. (July 15, 1949, 63 Stat. 441, ch. 338, § 609).

"§ 5-718. Effect upon existing statutes.

"(a) In the making and approval of project area redevelopment plans, the Planning Commission and the District Commissioners shall not be limited or bound by the provisions of sections 7-108, 7-117, 7-122, and 7-301 relating to width, location, and length of streets and highways. No department, instrumentality, agency, or official of the Federal Government or of the District of Columbia shall have any power to release or modify or depart from any feature or detail of an approved redevelopment plan or part thereof unless such release, modification, or departure be adopted by the Planning Commission and approved by the District Commissioners in accordance with the provisions of section 5-711 or unless the modification or departure be approved by Act of Congress.

"(b) Any power granted the District Commissioners or any District or Federal agency by the District of Columbia Code or by any statute, may, in addition to the purposes now specified, be exercised in furtherance of the protection or carrying out of any redevelopment plan or modification made and approved under sections 5-701 to 5-719. (Aug. 2, 1946, 60 Stat. 802, ch. 736, § 20.)

"§ 5-719. Separability of provisions.

"If any provisions of sections 5-701 to 5-719 or the application thereof to any body, agency, situation, or circumstances be held invalid, the remainder of sections 5-701 to 5-719 and the application of such provision to other bodies, agencies, situations, or circumstances shall not be affected thereby. (Aug. 2, 1946, 60 Stat. 802, ch. 736, § 21.)"

**Date of Judgment and of Petition for Appeal**

3. The judgment appealed from was entered in the United States District Court for the District of Columbia on November 20, 1953, as appears from copy of opinion and order attached hereto as Appendix A.

4. The petition for appeal was presented for approval on December 21, 1953.

**Substantial Nature of the Questions Involved and Showing of Abuse of Discretion in Dismissing the Complaint**

5. This appeal is based upon the judgment of the United States District Court for the District of Columbia, which dismissed plaintiff's complaint for temporary and permanent injunction, mandatory injunction, and declaratory judgment, and held the District of Columbia Redevelopment Act of 1945 to be constitutional as appears from the opinion and order attached hereto and prayed to be read as part hereof.

The complaint set out that the plaintiff, Max R. Morris, is the owner of premises 712-4th Street, S. W., Washington, D. C., which property is in commercial use, being improved by a department store. No part of said premises is used as a dwelling, residence, house or habitation. On or about October 24, 1952, the defendants, the National Capital Park and Planning Commission, purporting to act under the District of Columbia Redevelopment Act of 1945, adopted a plan known as "Redevelopment Plan for Southwest Redevelopment Project Area B." This plan called for the taking of plaintiff's commercial property without due process of law through the guise of the processes of eminent domain or otherwise for a private use, to wit, its lease or sale to private individuals, partnerships, ventures or corporations for development and use as private commercial property. On or about December 30, 1952, the defendants, the Board of Commissioners of the District of Columbia approved the said plan for the taking of plaintiff's property for a private use and without due process of law. The defendants, the District of Columbia Redevelopment Land Agency, their agents and employees are now proceed-

ing or are threatening immediately to proceed through the guise of eminent domain or otherwise to take the property of plaintiff for a private use, without due process of law.

The District of Columbia Redevelopment Act of 1945, under which the defendants purport to act, authorizes the taking of private property for a use other than a public use. Said act authorizes the sale or lease of property taken under the theory of eminent domain to private parties for their own development and gain, which is a taking without due process of law and hence unconstitutional. The administrative action of the three defendants, the National Capital Park and Planning Commission, the Board of Commissioners of the District of Columbia and the District of Columbia Redevelopment Land Agency in taking real property pursuant to the Act named above, amounts to a taking without due process of law and hence is unconstitutional.

In paragraph eleven of the Complaint the plaintiff further states that the proposed taking of his real property is not authorized by the District of Columbia Redevelopment Act of 1945 in that this Act authorizes only the taking of land used for housing, dwelling, habitation or residence purposes. But the property of the plaintiff is in commercial use, a department store. Further that the taking of his property is not for a public use but rather for a private use, i. e., the sale or lease to another private party or corporation to be commercially developed by said party or corporation. For both of the above reasons the plaintiff declares that the plan, approval and taking, as regards his property, are null and void.

The plaintiff contends that he will be irreparably damaged unless the Court enjoins the defendant, the District of Columbia Redevelopment Land Agency from taking, or proceeding to take, his property. He asks further that the Court declare the District of Columbia Redevelopment Act

of 1945 to be unconstitutional in and of itself and also as implemented by the "Redevelopment Plan for Southwest Redevelopment Project Area B." That insofar as said plan applies to his property it is null and void and that the defendants should be ordered to amend the plan by deleting therefrom provisions for the taking of his property.

To the Complaint the defendants filed a Motion to Dismiss on the ground that the Complaint failed to state a claim upon which relief can be granted. Defendants filed in the alternative a Motion for a Summary Judgment on the ground that defendants are entitled to judgment as a matter of law. Plaintiff filed opposition to above-named motions and a Cross-Claim for Summary Judgment.

The grounds upon which it is contended that the questions involved herein are substantial and that the rulings of the Court below were such as to bring the case within the jurisdiction provision relied upon herein, are:

The District of Columbia Redevelopment Act of 1945 is unconstitutional in that the taking of private property for City redevelopment per se is not a public use. In *Adams* v. *Housing Authority of City of Daytona*, 60 So. (2d) 663; 666, 668, the Supreme Court of Florida held in a test of a Florida Redevelopment Act which is very similar to the instant one: "The question in this case is not simply the abatement or discontinuance of a nuisance or blighted area. This is not simply a case of slum clearance in order to promote the public health, safety, morals and general welfare of the inhabitants and citizens of Daytona Beach. On its face it is a 'redevelopment' plan and a mere inspection of the plan shows it to be a real estate promotion. The very words of the plan declare it to be for the purpose of acquiring title to and ownership of several blocks of property constituting six and one half acres now used for resi-

dences to be redeveloped and sold or leased to private individuals, associations or corporations for private commercial and industrial purposes. As will be shown hereafter, it is not the purpose of the plan to acquire this land to erect new residences to be rented to persons in the low income brackets * * *"

"It is inconceivable that any one would seriously contend that the acquisition of real estate for the declared purposes set forth in the proposed Redevelopment Plan is for a public use or purpose. No one has ever heard of any corporation, association or individual going into any of the above-mentioned businesses except for profit or gain. If the municipalities can be vested with any such power or authority, they can take over the entire field of private enterprise without limit so long as they can find a blighted area containing sufficient real estate."

The Supreme Court of Georgia followed this same ruling in *Housing Authority of City of Atlanta* v. *Johnson*, 74 S. C. (2d) 891. In the *Matter of The New York City Housing Authority* v. *Andrew Muller*, 270 N. Y. 333, 342, "Legislation merely restrictive in its nature has failed because the evil inheres not so much in this or that individual structure as in the character of a whole neighborhood of delapidated and unsanitary structures. To eliminate the inherent evil and to provide housing facilities at low cost—the two things necessarily go together—require large scale * * *." (P. 343) Nothing is better settled than that the property of one individual cannot, without his consent, be devoted to the private use of another, even where there is an incidental or colorable benefit to the public. The facts here present no such case. In a matter of far-reaching public concern, the public is seeking to take the defendant's property and to administer it as part of a project conceived and to be carried out in its own interest and for its own protection."

The New York State Legislature recognized the necessity for amending their State Constitution to insert the necessary language which would allow a Redevelopment Act in the State. This was done by Amendment 18, Constitution of the State of New York. The necessity for such amendment was recognized by the Courts of New York in the case of *Murray* v. *La Guardia*, 291 N. Y. 320, and *Neufield* v. *O'Dwyer*, 79 N. Y. S. 53. The majority of States whose Courts have been concerned with the question of whether or not Redevelopment laws are constitutional have amended their respective Constitutions. In the case of the District of Columbia, while Congress is authorized to legislate for the said District in the same fashion as a State Legislature may legislate for its particular State, yet Congress is bound by the Constitution of the United States which has not been amended.

Granting that said redevelopment per se is a public use, still when it is connected with the other provisions of the District of Columbia Redevelopment Act and construed as a whole, it clearly violates the Fifth Amendment of the Constitution. The first portion of this Act provides for the taking and leveling of the alleged slum or blighted area. Certainly in this Section the "public use" does not require the transfer of title to the property. In determining whether or not this Act is constitutional, the entire Act in its entirety must be considered. Referring to Title 5-706 of the instant Act which is entitled "Transfer, Lease or Sale of Real Property in Project Area for Public and Private Use," the Court will note that paragraph (a) of this Section is a perfect example of a true "public use". Paragraph (b) simply states that the Agency shall have the power to lease or sell the remainder of the project area as an entirety to a redevelopment company or to an individual or a partnership * * *. Clearly this Section provides that the property shall be disposed of to private individuals or parties.

*Brown and Others* v. *The United States*, 263 US 78, 82, "The transaction is not properly described as the condemnation of the land of one private owner to sell it to another. The incidental fact that, in the substitution and necessary adjustment of the exchanges, a mere residuum of the town site lots may have to be sold does not change the real nature of what is done, which is that of a mere transfer of the town from one place to another at the expense of the United States." Earlier in the same case at page 81, the Court said, "It was a natural and proper part of the construction of the dam and reservoir to make provisions for a substitute town as near as possible."

Referring to the case of *United States ex rel. Tennessee Valley Authority* v. *Welch*, 327 US 546, the Government contends that the Supreme Court liberalized the power of eminent domain. Further the Act itself sets forth that it should be liberally construed and defines the "public use" toward which the land which was to be taken was to be used. In the case of *United States* v. *Gettysburg Electric Railway Company*, 160 US 668, 679, the Court states, "The really important question to be determined in these proceedings is, whether the use to which the petitioner desires to put the land described in the petition is that kind of public use for which the Government of the United States is authorized to condemn land.

"It has authority to do so whenever it is necessary or appropriate to use the land in the execution of any of the powers granted to it by the Constitution.

"Is the proposed use to which this land is to be put a public use within this limitation?"

This question may well be asked of the District of Columbia Redevelopment Act when considered in its entirety. The Court in the same case on page 680 stated, "The responsibility of Congress to the people will generally, if not always, result in a most conservative exercise of the right. It is quite a different view of the question which

Courts will take when this power is delegated to a private corporation. In that case the presumption that the intended use for which the corporation proposes to take the land is public, is not so strong, as where the Government intends to use the land itself.

Chief Justice Marshall best summed up the fashion in which the Court should examine a statute in testing its constitutionality when he stated in *McCulloch* v. *Maryland*, 4 Wheat, 316, 421, "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adequate to that end, which are not prohibited but consist with the letter and spirit of the Constitution are constitutional."

Title 5-706 referred to above certainly makes it clear that the Administration Agency appointed by Congress to administer the statute are unable to do more than merely fix the area to be redeveloped, level the structures thereon and then sell the land to private enterprise.

The plaintiff in this action is the owner of property which is strictly and entirely commercial property. He contends that the Act does not authorize the taking of commercial property but rather refers only to dwellings and housing units. A reference to Title 5-704 of the Act shows that the power to acquire and assemble real property by various means is subject to and in accordance with the procedures, conditions and other provisions in the other Sections of the Act. Title 5-701 which states the general purpose of the Act, by inference states that the principal purpose is to eliminate substandard housing, blighted areas, including the use of buildings in alleys as dwellings for human habitation. Further, in the same Section, the purpose is stated as being to effectuate the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing

conditions and the communities in the inhabited areas and blighted areas in such district. The whole tenure of the purpose of the Act is directed toward housing. *Fay* v. *Macfarland*, 32 App. D.C. 295, "Statutes like the present, authorizing the taking of private property for public use, are to be strictly construed."

The District of Columbia Redevelopment Act constitutes an unconstitutional delegation of legislative power to the administrative agencies because of the absence of any ascertainable standards for guidance in carrying out its functions.

Let us examine the limits or standards contained in this Act:

1. It is a matter of legislative determination that owing to
   (a) technological and sociological changes,
   (b) obsolete lay-out, and
   (c) Other factors, with respect to substandard housing and *blighted areas* including the use of buildings in alleys as dwellings * * * (emphasis supplied).

In Title 5-702, which is entitled "Definitions", the sole standard which is set to cover this legislative determination is "substandard housing conditions". There is no definition of "blighted areas" nor "obsolete lay-out", nor "other factors". In the case of *Yakus* v. *United States*, 321 US 414, 426, "Only if we could say that there is an absence of standards for the guidance of the Administrator's action, so that it would be impossible in a proper proceeding to ascertain whether the will of Congress has been obeyed, would we be justified in overriding its choice of means for affecting its declared purpose of preventing inflation."

*American Power Co.* v. *Securities Exchange Commission*

329 US 90, 105, "Necessity therefore fixes a point beyond which it is unreasonable and impracticable to compel Congress to prescribe detailed rules; it then becomes constitutionally sufficient if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority. Private rights are protected by access to the Courts to test the application of the policy in the light of these legislative declarations. Such is the situation here." In the local redevelopment law there are no boundaries set out as to what land constitutes "blighted areas". *Latto* v. *United States* 157 F(2) 623, 628, "As stated by the Supreme Court in upholding Emergency Price Control Act in Yakus v. United States 321 US 414, 424, 425, 'The essentials of the legislative functions are the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct—here the rule, with penal sanctions, that price shall not be greater than those fixed by maximum price regulations which conform to standards and will tend to further the policy which Congress has established. These essentials are preserved when Congress has specified the basic conditions of fact upon whose existence or occurrence, ascertained from relevant data by a designated administrative agency, it directs that its statutory command shall be effective. It is no objection that the determination of facts and the inferences to be drawn from them in the light of the statutory standards and declaration of policy call for the exercise of judgment, and for the formulation of subsidiary administrative policy within the prescribed statutory framework'."

In the case of *United States* v. *Dettra Flag Company*, 86 F(Supp.) 84, 86, "Beginning with Field v. Clark, 143 US 649, through to the present, the general legal dogmas which control delegation of ministerial duties have been evolved.

Congress must establish definite standards to be followed and policies to be effectuated, * * * * Within these standards the Administrator may exercise his discretion in the application and enforcement of the statute in order to carry out its purpose. Congress may not delegate nor may an Administrator usurp the legislative function. Intelligent principles and definite standards must be stated to guide, control and limit the execution of the statute; they cannot be left to the Administrator's discretion."

Numerous States have held statutes similar to the instant one to be constitutional. However, an examination of these various statutes which have been so held by their respective State Courts will disclose that the statutes themselves clearly define what is meant by "blighted area", "substandard housing", and other terms associated in the statute. Such is not the case with the District of Columbia Redevelopment Act. There are no boundaries which will limit the action of the administrative body and tell that body exactly what is and what is not to be considered as property to be taken.

## Conclusion

This appeal is within the exclusive jurisdiction of the Supreme Court and presents substantial questions of the greatest importance requiring review of the order of the three-judge Court which recognized the substantial nature of the questions in its opinion.

Respectfully submitted,

JAMES C. TOOMEY,
JOSEPH H. SCHNEIDER,
ALBERT GINSBERG,
*Counsel for Appellant.*

# APPENDIX "A"

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 5791-52

GOLDIE SCHNEIDER, Plaintiff,

v.

DISTRICT OF COLUMBIA, et al.

Civil Action No. 476-53

MAX R. MORRIS, Plaintiff,

v.

THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, et al.

Before PRETTYMAN, Circuit Judge, and CURRAN and KEECH, District Judges, sitting as a statutory three-judge court.

OPINION—Filed November 5th, 1953

PRETTYMAN, *Circuit Judge:* These are two civil actions, consolidated, in which the constitutionality of the District of Columbia Redevelopment Act of 1945[1] is challenged. The defendant Government bodies and officials filed motions to dismiss or, in the alternative, for summary judgment. Affidavits, with exhibits attached, were annexed to the motions. The plaintiffs filed cross-motions for summary judgment.

The plaintiffs are the owners of properties, one at 712 and the other at 716 Fourth Street, Southwest, both in the District of Columbia. One property is a department store

[1] 60 STAT. 790, D. C. CODE § 5-701 *et seq.* (1951).

owned and operated by the plaintiff Morris, and the other property is a retail hardware store owned and operated by the plaintiff Schneider. The defendants are the members of the District of Columbia Redevelopment Land Agency, that Agency itself (a corporation), the members of the National Capital Park and Planning Commission (called in this statute the "Planning Commission"), the members of the Board of Commissioners of the District of Columbia, and the District of Columbia, a municipal corporation. The properties of the plaintiffs are located within the boundary lines of an area known in this litigation as "Project Area B".

This is the first project undertaken under the Redevelopment Act. The Planning Commission first published a Comprehensive Plan for the whole District of Columbia. Then it prepared a "Land Use Plan" for an area called the "Southwest Survey Area", which includes almost the whole of Southwest Washington. That plan, the Commission report says, "includes the Commission's proposals for the distribution of the basic land uses in the Survey Area, the population to be accommodated, the proportions of different housing types and the amount of low-rent housing which should be provided." The report recites as two of the principal proposals for the survey area:

> "1. That the area continue to house about the same number of families.
>
> "2. That the plan induce balanced and protected residential neighborhoods for all income groups, with approximately one-fourth of the housing designated for low-income families."

The locations of other survey areas have been prepared by the Commission, one a Northwest Survey Area and one a Southeast Survey Area. Out of the Southwest Survey Area the Commission selected a part, to be known as Project Area B, for the first redevelopment project. This is what is now before us.

The proposal of the Commission was approved by the Board of Commissioners of the District of Columbia. Thereafter the Planning Commission adopted a redevelop-

ment plan for the area. The Land Agency made a detailed survey, using techniques considered standard by public authorities. A total of 1345 dwelling units in 1006 structures in the area housed a population of 5012. The survey indicated that 57.8 per cent of the dwellings depended upon outside toilets, 60.3 per cent had no "baths", 80.2 per cent no wash basins or laundry tubs, 29.3 per cent no electricity, and 83.8 per cent no central heating. The survey indicated that 64.3 per cent of the dwellings in the area were beyond repair and 18.4 per cent needed some major repairs.

After a public hearing the Commissioners approved the proposed redevelopment plan, and the Planning Commission certified it to the Land Agency for execution. Having obtained the necessary funds for preliminary steps from the Federal Housing and Home Finance Administrator, the Land Agency advertised for proposals to negotiate for the purchase or lease of land in the project area. After due consideration the Agency accepted the proposals of five bidders who owned property in the area (Safeway Stores, Inc., Martin Wiegand, Inc., Eagle Transfer Company, Max Greenwald, and Rudderforth Brothers), each to repurchase its present property, and of the Bush Construction Company for the remainder of the area.

The boundary of the project area is a line beginning at South Capitol and Eye Streets, running west to Fourth Street, north on Fourth Street, around Lots 89 and 90 in Square 541; thence further north on Fourth Street, around Lot 70 in Square 497; thence west along H Street, around Lot 43 in Square 497; thence east along G Street back to Fourth Street to the rear of lots facing on Fourth Street; thence north 95.75 feet, east 3 feet, north 16 feet, east 25 feet, north 150 feet, west 25 feet, north 61.75 feet to the south line of F Street; thence east along F Street 25 feet, north 282 feet, around Lot 16 in Square 538; thence east along E Street to the property line of the P. B. and W. railroad; thence along that boundary to South Capitol Street and to the point of beginning. From this described boundary five lots owned by the trustees of the Friendship Baptist Church were eliminated.

In an affidavit the Director of Public Health for the

District of Columbia characterizes Project Area B as a slum area "characterized particularly by the lack of those things which make for a good community." Attached to his affidavit are statistics of the Bureau of Vital Statistics of the District Health Department for Census Tract No. 60, within which Project Area B lies, being about one-half the residential-commercial area in the Tract. The figures for the year 1951 are:

| | Census Tract No. 60 | Entire District of Columbia |
|---|---|---|
| Death Rates Per 1000 Population | 15.6 | 10.1 |
| Death Rates from Tuberculosis Per 100,000 Population | 83.7 | 35.5 |
| Death Rates from Syphilis Per 100,000 Population | 41.8 | 7.1 |

The redevelopment plan for Project Area B (a copy of which was attached as Appendix E to the affidavit of the Assistant Secretary of the Planning Commission) shows that the land use allocations designated in the plan are:

| | Per Cent |
|---|---|
| Residential | 31.6 |
| First Commercial | 5.1 |
| Second Commercial | 6.7 |
| Public Uses | 15.3 |
| Expressway | 18.5 |
| Streets | 22.8 |

The plan provides for from 750 to 900 dwelling units, of which from 40 to 50 per cent are to be row houses and two-story flats and from 50 to 60 per cent are to be apartment houses. The maximum densities (that is, the number of dwelling units per net acre) are to be 25 row houses, 40 in two-story flats, and 43.5 in apartment houses. The need for accommodations is recited in the plan to be the following for different sizes of families: 30 per cent of the accommodations for families of two, 25 per cent for families of three, 20 per cent for families of four, 20 per cent for fami-

lies of five, and 5 per cent for families of six or more. Accordingly it is provided that at least 60 per cent of the total dwelling units shall have two bedrooms or more and at least 20 per cent three bedrooms or more. The plan requires that not less than one-third of the dwelling units in the area shall be low-rent units, which means that the maximum rental shall be $17.00 per room per month, excluding utilities. The plan provides for off-street parking space and enclosed play space. It provides that the instruments of lease or sale shall include a condition that the use of the land in the area shall conform to the redevelopment plan.

The full texts of the pertinent sections of the Redevelopment Act are attached as an Appendix. They can be summarized. Congress declared it to be a matter of legislative determination that, owing to technological and sociological changes, obsolete layout, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas are injurious to the public health, safety, morals and welfare. It declared that control by regulatory processes has proved inadequate and insufficient. It declared that in its judgment it is necessary to acquire property by gift, purchase, or the use of eminent domain to effectuate the discontinuance of the use for human habitation of substandard dwellings and of buildings in alleys of blighted areas, and that it is necessary to modernize the planning and development of such portions of the District. Procedure under the Act is divided between two governmental agencies. The Planning Commission is directed to make a general plan for the District of Columbia which will serve as a guide of development within which various project areas may be planned. That Commission is authorized to adopt boundaries for a "project area." Such an area is defined as an appropriate unit of redevelopment planning. "Redevelopment" is defined to mean replanning, clearance, redesign and rebuilding of project areas. "Substandard housing conditions" is defined to mean conditions obtaining in connection with the existence of housing accommodations for human beings which, be-

cause of lack of sanitary facilities, ventilation or light, or because of dilapidation, overcrowding, faulty interior arrangement, or any combination of these factors, are in the opinion of the Commissioners detrimental to the safety, health, morals, or welfare of the inhabitants of the District of Columbia. The Commission is authorized to adopt a redevelopment plan for the area, which shall contain a site and use plan, specifications of standards of population density and building intensity, and, by specification of maximum rentals or otherwise, the amount or character of any low-cost housing for which the area is to be redeveloped. A project area redevelopment plan must be approved by the Commissioners of the District of Columbia. Thereafter the plan is to be certified to the Land Agency, a body of five members created for the purposes of this statute. To further the redevelopment of blighted territory and the prevention, reduction or elimination of blighting factors or causes of blight, the Agency is authorized to acquire the land in the area by purchase, gift, or eminent domain. For this purpose the Agency is authorized to bring condemnation proceedings. After the acquisition of title to the property the Agency is to transfer to the United States or the District of Columbia those pieces which are to be devoted to public uses (other than public housing), and the Agency is authorized to lease or sell the remainder of the project area to a redevelopment company or an individual or partnership, or to sell or lease parts of the area separately. While the Agency is given power to determine the terms of a lease or sale, it is required to provide that the lessee or purchaser shall carry out the approved redevelopment plan. The statute requires that, prior to approval by the District Commissioners of the redevelopment plan, they must satisfy themselves that housing is available at rents within the reach of the low-income families to be displaced from the project area. The District agencies are authorized to secure financial aid under Title 1 of the Federal Housing Act of 1949. The Redevelopment Agency is authorized to borrow money either from the Housing Administrator or from private sources as contemplated by that statute.

The critical features of the statute are: (1) It is premised upon the phrase which is the traditional definition of the police power—public health, safety, morals and welfare. (2) Congress declared the policy of the United States to be to protect the welfare of the inhabitants of the District by eliminating conditions injurious to the public health, etc. (3) Congress declared that the acquisition of real property and the leasing or sale thereof pursuant to a project area redevelopment plan is a public use. (4) The phrase "substandard housing conditions" is defined, but the phrase "blighted area" is not specifically defined. (5) For the purpose of preventing, reducing or eliminating "blighting factors or causes of blight" Congress authorized the acquisition of the title to the real estate by condemnation proceedings under the power of eminent domain. (6) Congress provided for the lease or sale of the property in a project area to private persons. (7) The uses to which the property, having been sold, could be put by the purchaser were limited, in that such uses must conform to the redevelopment plan. (8) Congress required that the District Commissioners prior to approval of any redevelopment plan, should be satisfied that adequate housing is available to the low-income families to be displaced.

The plaintiffs say that the Redevelopment Act itself is unconstitutional on two grounds, (1) that it authorizes the taking by eminent domain of the fee title to private property and the sale or lease of that title to other private persons for private uses; and (2) that the statute authorizes the taking of property in "blighted areas" without defining that term and thus fails to establish any standard sufficiently definite to sustain the delegation of power. They also say that the statute is unconstitutional in its application to the properties of the plaintiffs, which are commercial properties; that the statute should be construed strictly and, as thus construed, does not apply to commercial property or to any property upon which slum conditions do not exist. The respondent Government agencies and officials say that the Act is constitutional, that the constitu-

tionality of statutes similar in all substantial respects to the local statute has been sustained by the highest courts of many states and by the Supreme Court of the United States; that the elimination of slum areas, injurious to the public health, safety, morals and welfare, is a public purpose; that the condemnation of title to the property in the entire Project Area B is incidental and essential to the elimination of the slum area; that, since Congress has declared the condemnation of fee title to this property, the courts are without power to disturb that declaration; that Congress has validly delegated to the administrative agencies the power to determine the boundaries of a redevelopment area project.

We can quickly dispose of the case in so far as it relates to certain parts of the property in the project area. The power to acquire by eminent domain property to be devoted to streets (including the "expressway"), schools, recreation centers, parks (including the "greenway"), and other "public uses" is established beyond question. Likewise the power to acquire by eminent domain real estate to be used for the construction of low-cost housing is established in this jurisdiction by *Keyes* v. *United States*.[2] Our problem concerns the remainder of the property in the area, which is to be acquired by eminent domain and sold or leased to private persons for private uses, with the provision that not less than one-third of the housing accommodations to be built on the property are to be for low-rent housing.

We can at once eliminate from consideration the possibility that the redevelopment plan for Project Area B is a low-rent housing project. In specifying that one-third of the dwellings be for low rent, the redevelopment plan specifically says:

---

[2] 73 App. D.C. 273, 119 F.2d 444 (1941), *cert. denied*, 314 U.S. 636, 86 L.Ed. 510, 62 S.Ct. 70 (1941).

> "With the well-known scarcity of low-rent housing throughout the city there will undoubtedly always be tenants for this type of property. More low-rent units would be economically feasible but it was not deemed desirable to have too high a proportion of one economic group concentrated in one area."

We also dispose at once of plaintiffs' contention that the application of the Act to commercial properties is without due process of law because not authorized by the Act. The Act applies alike to all properties which meet the conditions laid down in it. It[3] authorizes the acquisition by condemnation of "real property" for the purpose of the Act and defines "real property"[4] without differentiation between kinds.

At the beginning of our consideration we note some opinions of the United States Supreme Court which are cited to us and which have dealt with the boundaries of the power of eminent domain. The basic case is *Fallbrook Irrigation District* v. *Bradley*.[5] The case involved an irrigation act of the State of California, and the question was whether the construction of irrigation works is a public purpose. The California statute and the highest court of the State had declared it to be a public purpose. The Supreme Court of the United States held that, while the conclusions by the legislative and judicial branches of the state government are not conclusive and binding, the answer to the question frequently and largely depends upon the facts and circumstances surrounding the particular subject matter. It held that the people of California must be more familiar with such circumstances in that State than any stranger could be and that because of this familiarity the declarations of

---

[3] 60 Stat. 793 (1946), D. C. Code § 5-764 (1951).

[4] 60 Stat. 792 (1946), D. C. Code § 5-702(m) (1951).

[5] 164 U.S. 112, 41 L.Ed. 369, 17 S.Ct. 56 (1896).

the people, legislature and courts of California must be treated with very great respect. The Court held that if irrigation of lands were not a public purpose no general scheme of irrigation could be formed or carried into effect, because without the power to take property by condemnation it would be impossible to acquire the necessary land. The Court held that this fact, while not conclusive, was a most important consideration, because otherwise millions of acres otherwise cultivable would be left in their arid and worthless condition. Taking all the facts into consideration the Court concluded that "the irrigation of really arid lands is a public purpose."[6] The Court further held that, since the question as to what land should be subjected to irrigation was one of fact, the decision of the legislature, or its delegated agent, upon that question was, in the absence of actual fraud or bad faith, conclusive.

In *Clark* v. *Nash*[7] the Court applied the doctrine of the *Fallbrook* case to an irrigation project in the State of Utah, although the project, authorized by a State statute, was the condemnation of land by an individual for the purpose of irrigating his own land. The Court was careful to caution that the decision did not approve a general rule that private property might be taken in any case to promote the public interest; the decision was based upon the particular facts of the case, involving peculiarities of the use of water in the arid and mountainous states of the West and a recognition that differences in climate and soil rendered necessary different rules in different states. In *Strickley* v. *Highland Boy Gold Min. Co.*[8] the Court applied the doctrine of *Clark* v. *Nash* to the condemnation of a right-of-way by a mining corporation for an aerial bucket

[6] *Id.*, 164 U.S. at 164, 41 L.Ed. at 390.

[7] 198 U.S. 361, 49 L.Ed. 1085, 25 S.Ct. 676 (1905).

[8] 200 U.S. 527, 50 L.Ed. 581, 26 S.Ct. 301 (1906).

line across a placer mining claim. The Court held that, in view of the conditions respecting mining in the State of Utah and the findings of the State authorities upon the necessity, it would not say that those authorities were wrong, that in such unusual cases the Fourteenth Amendment did not prevent a state from requiring concessions from private individuals. In *Hairston* v. *Danville & W. Ry.*[9] the Court applied the doctrine of the three cases we have discussed to the condemnation of land for a spur railroad track and concluded that upon the facts of the case, and certain testimony in particular, the use involved was clearly public.

*Joslin Co.* v. *Providence*[10] dealt with the condemnation of land for the construction of a city water supply system, undoubtedly a public use. The opinion is pertinent here because the Court laid down the rule, citing a line of cases, that, public purpose having been established, the necessity of condemning property for that use is a legislative question and not a judicial question. In *Rindge Co.* v. *Los Angeles*,[11] decided the same day, the Court applied the same rule, making clear, by sharply dividing the opinion, that the nature of a use, whether public or private, is ultimately a judicial question, but that the public necessity of taking particular property for that use is a legislative and not a judicial question and may be delegated by the legislature to public officials.

This brings us to *Brown* v. *United States*,[12] in which the opinion was delivered by Mr. Chief Justice Taft. The case involved the power of Congress to condemn land. The construction of a reservoir on the Snake River in Idaho re-

---

[9] 208 U.S. 598, 52 L.Ed. 637, 28 S.Ct. 331 (1908).

[10] 262 U.S. 668, 67 L.Ed. 1167, 43 S.Ct. 684 (1923).

[11] 262 U.S. 700, 67 L. Ed. 1186, 43 S.Ct. 689 (1923).

[12] 263 U.S. 78, 68 L.Ed. 171, 44 S.Ct. 92 (1923).

sulted in the flooding of three-fourths of the town of American Falls. In order to provide a new site for the town, to which the buildings were to be removed, the Government, having purchased part of the needed property, instituted condemnation proceedings to secure the needed remainder. The action was contested on the ground that it was not for a public use of the property. The Court held that under the peculiar circumstances of the case the acquisition of the new town site was so necessary to the irrigation project that the public use, which was the reservoir, covered the taking of the town site. The Court noted that its conclusion was not in conflict with the case dealt with in the *Opinion of Justices* in 204 Mass. [13] In that case the justices held that the City of Boston, building an improved street, had no power to condemn lots abutting the proposed street with a view to selling them thereafter for the erection of warehouses, etc., usable in private business. The Court said that the distinction between that case and the one before it was that the removal of the town of American Falls was a necessary step in the public improvement itself. The Court said flatly that the tract selected *for* the new site was "the only practical and available place to which the part of the town to be flooded could be moved so as to be united with the one-quarter of the old town which would be left." [14]

In *United States ex rel. T. V. A.* v. *Welch* [15] the question was whether the power to condemn certain land had been conferred upon the Tennessee Valley Authority and, if so, whether the statute was constitutional. The reservoir created by the construction of a dam submerged a roadway which was the only means of ingress and egress for a moun-

[13] 204 Mass. 607, 91 N.E. 405 (1910).

[14] *Supra*, 263 U.S. at 81.

[15] 327 U.S. 546, 90 L.Ed. 843, 66 S.Ct. 715 (1946).

tainous area upon which some 216 families lived. After various negotiations between the State of North Carolina, the county, the T. V. A., and the National Park Service, it was determined that the most economical and most feasible solution to the difficulty was for the T. V. A. to acquire by purchase or condemnation all the land in the isolated area and to transfer it to the National Park Service for inclusion within the Great Smoky Mountain National Park. The District Court and the Court of Appeals held that the T. V. A. had no power under the statute to condemn this land. The Supreme Court reversed. The Court said that it viewed the entire transaction, that is, the construction of the dam, the reservoir, and the acquisition of the property, as a single integrated effort. It held that the responsibilities placed on the T. V. A. were not only the building of dams but related to navigability, flood control, reforestation, marginal lands, and the agricultural and industrial development of the whole Tennessee Valley. The Court discussed the scope of the judicial power to determine what is a public use for the purposes of the Fourteenth Amendment and quoted from *Old Dominion Co.* v. *United States*,[16] saying that whatever may be the scope of that power the decision of Congress "is entitled to deference until it is shown to involve an impossibility." The Court held that the T. V. A. took the tracts for a public purpose. The cited case, *Old Dominion Co.* v. *United States*, involved the condemnation of land upon which the United States had built warehouses for the Quartermaster of the Army at a cost of more than $1,500,000, which the Court said "clearly were for a public use." Congress had made a specific appropriation for this land, labeling it "Sites for military purposes" and "for the Quartermaster warehouses". A contention was made that the Secretary of War and his

[16] 269 U.S. 55, 66, 70 L.Ed. 162, 46 S.Ct. 39 (1925).

subordinates had in mind saving to the Government the cost of the buildings rather than a future use of the land by the Government. In that connection the Court said that the decision of Congress "is entitled to deference until it is shown to involve an impossibility."

We come, then, to the problem presented in the case at bar. It lies in three parts. 1. First, there is the slum. A slum is made up of houses (or substitutes for houses), the appurtenances thereto, and people. The houses and appurtenances are such that the people live in filth and breed disease and crime. A slum can be eliminated by tearing down the houses, destroying the appurtenances, and either building new housing on the spot for the people or moving the people away. 2. Second, there is the land upon which a slum exists. The land itself neither contributes to nor detracts from a slum. It is the same whether a slum or a model building exists upon it. The land cannot be destroyed or moved. Only its ownership and its use can be changed. If cleared, the land upon which a slum presently exists would have no harmful effects upon the public. Neither does naked ownership of land, apart from use, have any harmful public effects. A slum and the legal title to the naked land upon which it exists are separate things. 3. Third, there are sections of cities which are not at the present time used to their fullest economic possibility, or are not arranged to fit current ideas of city development. An outstanding example is Trinity Church and its surrounding cemetery at the corner of Wall Street and Broadway in New York City. Old streets are not so wide as new ones would be. Apartment houses would be more economically efficient than are single dwellings. Phrases used to describe this situation[17] are "inadequate planning of the

[17] Taken from the Pennsylvania statute. Urban Redevelopment Law of May 24, 1945, P. L. 991, 35 P. S. 1701 *et seq.*

area", "excessive land coverage by the buildings thereon", "defective design and arrangement of the buildings thereon", "faulty street or lot layout", "economically or socially undesirable land uses". The statutes dealing with these areas are usually called "urban redevelopment" laws. The areas are frequently called "blighted". They are in no sense slums, or similar to slums; they are out-of-date. They do not breed disease or crime; they fail to measure up to their maximum potential use in terms of economic, social, architectural, or civic desirability.

These three distinct factual situations present three distinct sets of legal questions.

I

First, we have the problem of the slum. There is no doubt concerning the power of Congress to delegate to the District Government the power to clear slums. The power lies within the well-established concepts of police power, which is the protection of the public health, safety, morals and welfare. And the Supreme Court pointed out in *District of Columbia* v. *Thompson Co.*[18] that the Congress can delegate the full of the police power to the District Government. Moreover, the clearance of a slum is a public purpose, and the condemnation of improvements upon land—buildings and appurtenances—which create the hazards to health, safety, etc., is within the power of eminent domain. Since the Government can condemn such property without compensation under the police power, *a fortiori* it can condemn and pay reasonable compensation. Since there is power to condemn without compensation there is power to condemn with compensation.

There have been in existence for years statutes which give the District Government condemnation power in respect to unsafe and insanitary buildings and in respect to alley dwellings.[19] If they are not sufficient to complete the ad-

[18] 346 U.S. 100, 97 L.Ed. —, 73 S.Ct. 1007 (1953).

[19] D. C. Code §§ 103-104, 501-504, 661-667 of Title 5 (1951).

visable eliminations, Congress has ample power to correct the deficiencies.

We hold, therefore, that, so far as the District Redevelopment Act authorizes the condemnation of improvements upon land which are the creating or perpetuating causes of conditions injurious to the public health, safety, morals and welfare, as that term is used to describe breeding grounds for crime and disease, it is valid.

The problem of the slum includes not only the elimination of presently existing slums but also the prevention of future slums. That objective involves questions different from and more difficult than the elimination of present conditions. Prevention deals with developments which may occur in the future, not merely with conditions which exist in the present. So the problem of prevention is: What should be done with property to prevent future developments which will eventuate in slums? Regulations affecting the use of property, designed to prevent the breeding and spread of disease and crime, are within the police power and, when reasonable, are clearly valid. And it seems to us that the prevention of such conditions is a public purpose which would sustain the validity of seizure by eminent domain where the seizure is necessary for the purpose. But that conclusion poses problems. Among these problems are: Is the seizure *necessary* to the prevention of slums? Does the proposed disposition of the property after seizure reasonably serve the purpose of prevention? Perhaps the problem is more vividly phrased this way: If no slum exists, either because none has ever existed at that place or because an existing slum has been cleared, may the Government seize property in order to prevent the future development of a slum? Practical questions are immediately obvious. Why is such a drastic step by the Government necessary or appropriate to prevent a future slum on a certain parcel of land? Will the proposed disposition of the property prevent slum conditions from occurring on it? The buildings, appurtenances, etc., which constitute the slum itself are usually simply destroyed. The puzzling questions relating to slum prevention, therefore, relate more directly to the title to the land than they do to the ownership of the im-

provements. We therefore discuss the matter in more detail in the next section of this opinion.

II

Second, we have the problem of the title to the land upon which a slum now exists. Can the Government seize title to land from which a slum has been or could be cleared, and sell it to a private person for private uses? If the land is to be devoted to schools, roads, parks and such, or to public housing, or to needed low-cost housing, it is to be devoted to a public use, and so its seizure under the power of eminent domain is clearly authorized. But, if the sale subsequent to the seizure is to a private person for a purely private use—such, for example, as apartment houses, stores or theaters—the validity of the seizure of the title is a different problem.

The traditional definition of the power of eminent domain is in terms of public use. It contemplates the use to which the property is to be put after it has been taken. Illustrations are those we have just mentioned, the taking of property for schools, streets, parks, etc. But the term "public use" has progressed as economic facts have progressed, and so projects such as railroads, public power plants, the operation of mines under some conditions, and, more recently, low-cost housing have been held to be public uses for which private property may be seized. Moreover, the traditional concept of use as the keystone of eminent domain has been enlarged in modern thought and cases. We find it described as public purpose. The variation in the term from "use" to "purpose" indicates a progression in thought. The idea is that the taking itself, as distinguished from the subsequent use of the property, may be required in the public interest. The Supreme Court has not gone far in that direction, but we think we see it indicated in the *Brown* and *T. V. A.* cases, which we have discussed. We so hold. We hold that the taking of title to real estate for the public purpose of eliminating or of preventing slums is within the power of eminent domain, even though the use to which the property is put after seizure is not a public use; provided (1) that the seizure of the title is necessary to the elimina-

tion of the slum or (2) that the proposed disposition of the title may reasonably be expected to prevent the otherwise probable development of a slum.

These extensions of the concept of eminent domain, to encompass public purpose apart from public use, are potentially dangerous to basic principles of our system of government. And it behooves the courts to be alert lest currently attractive projects impinge upon fundamental rights. The reasoning upon the point begins with the basic concept of natural rights and of property as one of those rights. To secure those rights governments were instituted, says the Declaration, and to secure them governments may impose limitations upon them; moreover, by clear implication the Fifth Amendment authorizes the taking of private property for public use. But here is the end of government power. That the Government may do whatever it deems to be for the good of the people is not a principle of our system of government. Nor can it be, because the ultimate basic essential in our system is that individuals have inherent rights, and as to them the powers of government are sharply limited. There is no general power in government, in the American concept, to seize private property. Hence it is universally held [20] that the taking of private property of one person for the private use of another violates the due process of law clauses of the Fifth and Fourteenth Amendments. The reasoning which applies to this right is the same as that which applies to other rights guaranteed by the Constitution. Congress can suppress free speech if a clear and present danger necessitates it, but the suppression can go only as far as the necessity. In these principles lies one of the critical differences between our system of government and the totalitarian systems.

The restriction of the power of seizure to the necessities of the public use or purpose is clearly taught by the Supreme Court in *Brown* v. *United States, supra*. As we have

---

[20] A chain of study could begin with *Missouri Pacific Ry.* v. *Nebraska ex rel. Board of Transportation*, 164 U.S. 403, 417, 41 L. Ed. 489, 495, 17 S.Ct. 130 (1896). Many treatises have been written upon it. *See, e.g.*, COOLEY, CONSTITUTIONAL LIMITATIONS 1124 *et seq.* (8th ed. 1927); MOTT, DUE PROCESS OF LAW, pt. 9, c. 21 (1926); 1 NICHOLS, EMINENT DOMAIN § 4.7 *et seq.* (3d ed. 1950).

already pointed out, the Court explicitly noted that its decision was not in conflict with the Massachusetts case[21] in which the justices held that, while the power of eminent domain permitted the seizure of property necessary to widen a street, it did not permit the seizure of abutting property for the purpose of reselling it for private uses. Mr. Justice Brandeis said in *Thompson* v. *Consolidated Gas Co.*,[22] "And this Court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid."[23] We do not understand the *T. V. A.* case, *supra*, to repudiate this principle. Rather it affirmed it. The Court, after examining the facts and the statute, held the taking to be for a public purpose; it did not hold that T. V. A. might seize property beyond the public need. "When the need arises," said the Court, "individuals may be required to relinquish ownership of property • • •."[24]

The rule is laid down in *Pennsylvania Mut. Life Ins. Co.* v. *City of Philadelphia*,[25] decided by the Supreme Court of Pennsylvania and cited with approval by that court in *Belovsky* v. *Redevelopment Authority*.[26] It held invalid an act authorizing the seizure and resale of property abutting a public park merely for the purpose of protecting the parkways and "the preservation of the view, appearance, light, air, health, or usefulness thereof."

In the *Muller* case[27] the Court of Appeals of New York said:

> "Whenever there arises in the state, a condition of affairs holding a substantial menace to the public health, safety, or general welfare, it becomes the duty

---

[21] Opinion of Justices, *supra* note 13.

[22] 300 U.S. 55, 80, 81 L.Ed. 510, 57 S.Ct. 364 (1937).

[23] And see *Kohl* v. *United States*, 91 U.S. 367, 23 L.Ed. 449 (1876); *Cincinnati* v. *Vester*, 281 U.S. 439, 74 L.Ed. 950, 50 S.Ct. 360 (1930); *Salisbury Land & Improvement Co.* v. *Commonwealth*, 215 Mass. 371, 102 N.E. 619 (1913).

[24] *Supra*, 327 U.S. at 554-555.

[25] 242 Pa. 47, 88 Atl. 904 (1913).

[26] 357 Pa. 329, 54 A.2d 277 (1947).

[27] *New York City Housing Authority* v. *Muller*, 270 N.Y. 333, 1 N.E.2d 153, 155 (1936).

of the government to apply whatever power is necessary and appropriate to check it. There are differences in the nature and characteristics of the powers, though distinction between them is often fine. * * * But if the menace is serious enough to the public to warrant public action and the power applied is reasonably and fairly calculated to check it, and bears a reasonable relation to the evil, it seems to be constitutionally immaterial whether one or another of the sovereign powers is applied."

We are of opinion that title to real estate cannot be seized by the Government merely because a slum presently exists upon the land. Some further necessitous circumstance must exist to validate such a seizure. It must be either that the clearance of the slum is impracticable without taking the title to the land or that proposed restrictions which can be imposed only through the medium of a resale are fairly calculated to prevent recurrence of slum conditions. Ordinarily the seizure of the fee title to land would seem to be neither necessary nor reasonably incidental to the clearance of a slum. But we readily see that there could be circumstances—such, for example, as an obdurate landlord or an impoverished homeowner—in which the seizure of the title, with compensation therefor, ought in reason accompany the condemnation of the buildings. Valid seizure for prevention purposes frequently occurs when the changing of a neighborhood from residential to manufacturing, maritime, or major commercial leaves a remnant of housing accommodations which nurture slum conditions and which ought to be removed to permit other uses.[28]

Whether the taking of a certain piece of property is necessary for a certain public use or purpose is initially and almost wholly a legislative question. But like every other legislative determination it is subject to the Constitution. Congress itself could not deprive a person of his property without due process of law. It is the duty of the courts, when a legislative act is challenged as violative of the Constitution, to determine that issue. Indeed it is for that

---

[28] See, *e.g.*, *Burt* v. *Pittsburgh*, *Schenck* v. *City of Pittsburgh*, and *Foeller* v. *Housing Authority of Portland*, *infra*.

specific purpose that this three-judge court is assembled by direct and specific authorization of Congress. Judicial consideration of the validity of a legislative decision that a particular property be seized for a public purpose is not farther removed from judicial inquiry than is the validity of a statute. As Mr. Justice Burton pointed out in *United States* v. *Carmack*,[29] the Fifth Amendment provides an owner "with important protection against abuse of the power of eminent domain".

Just as the seizure of property by the Government is a legislative rather than a judicial question, it is also a legislative rather than an executive question. The Supreme Court made amply clear in *Youngstown Co.* v. *Sawyer*[30] that, unless there is an act of Congress which expressly authorizes seizure or from which authority to seize can fairly be implied, there is no executive power of seizure. That rule must guide us here.

In the case before us Congress made no declaration concerning the specific property involved. Its declaration concerned "conditions existing in the District of Columbia with respect to substandard housing and blighted areas". Obviously that declaration did not concern all conditions everywhere in the District. It meant certain conditions in certain places. Congress declared as a matter of legislative determination that the conditions to which it referred "are injurious to the public health, safety, morals, and welfare". Here, then, in that quoted expression is the description of the conditions to which the statute is directed. Then Congress declared that to effectuate its policy of "eliminating all such injurious conditions" and "to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas" acquisition of property by eminent domain is necessary. When it conferred the power of eminent domain upon the Agency it did so subject to the "conditions" of the Act and "for that purpose", *i.e.*, for the redevelopment of "blighted territory" and the prevention and elimination of "blighting factors or causes of blight".

With those limitations Congress delegated to executive

---

[29] 329 U.S. 230, 236-237, 91 L.Ed. 209, 67 S. Ct. 252 (1946).
[30] 343 U.S. 579, 96 L.Ed. 1153, 72 S. Ct. 863 (1952).

officials the authority to determine what properties should be seized. Of course it could do so, provided the required tests, established long ago, are met. The tests are: The purpose for which the property is to be seized must be a public purpose; the seizure must be for the declared purpose; and the act of delegation must be sufficiently explicit to enable the administrators to act with administrative power and not impinge upon legislative power, and also to enable a court to determine whether the administrators are within the congressional grant.

With these principles in mind we hold that the seizure of title to real estate upon which slums exist or upon which a slum may be foreseen would be valid under the Constitution only to the extent that the taking is reasonably necessary to the accomplishment of the asserted public purpose. We hold that the Redevelopment Act goes no further than that, that it confers upon the administrative officials power to seize property, under the limitations we have described, only for the purpose of eliminating or preventing conditions injurious to the public health, safety, morals or welfare. Thus construed, we hold the statute to be valid. We hold that the necessity for the seizure of the title to a parcel of real estate involves facts and judgment, that these are essentially for the administrators, and that the function of the courts is limited to determining whether the conclusions of the administrators are within reason upon the record and within the congressional delegation of authority.

## III

Third, we have the problem of the area which is not a slum but which is out-of-date, called by the Government "blighted" or "deteriorated". The Government says the statute is not limited to slum clearance but extends to what is called "urban redevelopment"; and that as thus construed the statute is valid. The word in the statute upon which the Government rests its view is "blighted", which is not defined in the statute. A hint of a meaning such as that urged by the Government is found in the phrase "backward and stagnant and therefore blighted", which appears near the end of Section 3(n) of the Act. But

we have already indicated our conclusion that the more direct provisions of the statute control its scope, that it is the clearly expressed intent of the Congress to authorize in this statute the seizure of property only for the purpose of eliminating and preventing thereafter conditions injurious to the public health, safety, morals and welfare. If we did not find this meaning clear upon the face of the statute, we would be impelled to construe it with that meaning, because otherwise the statute would be unconstitutional.

The contention as to "blight" and "urban redevelopment" would cover two possible factual situations: one where the plan is to redevelop an area in which no slums exist, and the other where the plan is to redevelop an area which the Government deems "appropriate" for redevelopment but upon only a part of which slums exist. We first discuss the two possibilities separately.

The hypothesis in the first phase of this consideration is an urban area which does not breed disease or crime, is not a slum. Its fault is that it fails to meet what are called modern standards. Let us suppose that it is backward, stagnant, not properly laid out, economically Eighteenth Century—anything except detrimental to health, safety or morals. Suppose its owners and occupants like it that way. Suppose they are old-fashioned, prefer single-family dwellings, like small flower gardens, believe that a plot of ground is the place to rear children, prefer fresh to conditioned air, sun to fluorescent light. In many circles all such views are considered "backward and stagnant". Are those who hold them "therefore blighted"? Can they not, nevertheless, own property? Choice of antiques is a right of property. Or suppose these people own these homes, and can afford none more modern. The poor are entitled to own what they can afford. The slow, the old, the small in ambition, the devotee of the outmoded have no less right to property than have the quick, the young, the aggressive, and the modernistic or futuristic.

Is a modern apartment house a better breeder of men than is the detached or row house? Is the local corner grocer a less desirable community asset than the absentee stockholder in the national chain or the wage-paid manager?

Are such questions as these to be decided by the Government? And, if the decisions be adverse to the erstwhile owners and occupants, is their entire right to own the property thereby destroyed? Even if the line between regulation and seizure, between the power to regulate and the power to seize, is not always etched deeply, it is there. And, even if we progress in our concepts of the "general welfare", we are not at liberty to obliterate the boundary of governmental power fixed by the Constitution.

The terms "public use" and "public purpose" have never been defined with precision, and cannot be. Localities, customs and times change, and with them the needs of the public may change. But even the most liberal courts have put boundaries upon the meanings. One eminent authority[31] sums up the matter by saying that the courts which go furthest in sustaining the power of eminent domains hold that "anything which tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the inhabitants of a section of the state, or which leads to the growth of towns and the creation of new resources for the employment of capital and labor" constitutes a public use. We think so unqualified a definition cannot be sustained, because every factory or mercantile house of any size meets that definition to some degree, and most certainly the Government has not an unrestricted power to seize one man's property and sell it to another for the building of a factory or a store. The decisions of the courts which used such sweeping language and which are cited to us fall far short of supporting the contention made to us in the present case. We shall discuss them in a moment.

It is said that the established meaning of eminent domain includes measures for the "general welfare" and that new social doctrines have so enlarged the concept of public welfare as to include all measures designed for the public benefit. The difficulty lies somewhat in the unqualified philosophical declaration, but it lies more in the practicality that some person or persons must determine, if that be the

---

[31] 2 NICHOLS, EMINENT DOMAIN § 7.2 *et seq.* (3d ed. 1950).

rule, what is the public benefit. Therein lies the insuperable obstacle, in the American view. There is no more subtle means of transforming the basic concepts of our government, of shifting from the preeminence of individual rights to the preeminence of governemnt wishes, than is afforded by redefinition of "general welfare", as that term is used to define the Government's power of seizure. If it were to be determined that it includes whatever a commission, authorized by the Congress and appointed by the President, determines to be in the interest of "sound development", without definition of "sound development", the ascendency of government over the individual right to property will be complete. Such ascendancy would logically follow over the rights of free speech and press, it seems to us.

We are of opinion that the Congress, in legislating for the District of Columbia, has no power to authorize the seizure by eminent domain of property for the sole purpose of redeveloping the area according to its, or its agents', judgment of what a well-developed, well-balanced neighborhood would be; lest this sentence be misconstrued out of context, we repeat our hypothetical assumption for the purposes of this first phase of Section III of our opinion that no slum exists on the hypothetical property or in the area and that the seizure is not for a public use.

But the Government rests the present case upon a narrower basis. And this brings us to the second phase of the problem posed in this section of the opinion. This concerns a situation where the plan is to redevelop an area upon only a part of which slums exist. The state cases hold, the Government says, that "where from a comprehensive standpoint there is a *public benefit*, such as slum clearance, flowing from the project, the taking is for a public use regardless of the ultimate disposition of the particular piece of property." The Government says that it has determined that Project Area B in the case at bar is an appropriate area for "redevelopment", that slums exist in that area, and that therefore it may seize the title to all the land in the area and, having replanned it, sell it to private persons for the building of row houses, apartment houses, commercial establishments, etc. In essence the claim is that if slums

exist the Government may seize, redevelop and sell all the property in any area it may select as appropriate, so long as the area includes the slum area. This amounts to a claim on the part of the authorities for unreviewable power to seize and sell whole sections of the city.

We think, as we have indicated, that the Redevelopment Act does not contain so broad an authorization. But, if it did so, it would be invalid from two viewpoints. In the first place, a public purpose must be the reason for the seizure of private property, not merely the excuse for the seizure. There must be a necessity for the taking in order to accomplish the public purpose. The rule governing the seizure of property geographically unnecessary to slum clearance is the same as that governing the unnecessary seizure of title to land upon which a slum exists, which rule we have already discussed. In the second place, the Redevelopment Act does not contain standards sufficiently definite to sustain the validity of an authorization as broad as that claimed. "Blight" is not defined in the statute. No standard other than "substandard housing" is defined. We are not told where we may ascertain what a proper land coverage would be, or a building arrangement without defect, or a street layout without fault, or what is desirable economic use or even socially desirable use of land, or what is "backward" or "stagnant", or what is "sound development". These criteria for seizure would be formulated on a case-by-case basis.

The inadequacy of the statutory prescriptions is demonstrated by the proposed boundary lines of Project Area B. We have in the statute no measuring means by which to tell why one property on Fourth Street is to be seized, or can be seized validly, while another property on the same side of the same block, or across the street, or in the next block is not included in the area to be condemned. Congress cannot confer undescribed authority to regulate a business; *a fortiori* it cannot confer undefined power to seize in full ownership businesses and properties.

The Government cites the recent redevelopment cases in the state and federal courts. The state cases are far too numerous to discuss in detail, but study shows that they

deal with low cost housing projects, with solutions for acute conditions affecting some major feature of the life of the city, or with slum clearance alone. The *Foeller* case[32] is an example of an exhaustive study, with many citations of authority. It involved an area in the waterfront district of Portland, Oregon, where dwellings remained scattered among the commercial and industrial establishments as these establishments increased in number and the residential areas retreated from them. This inevitably created slums. Moreover, if the old houses were removed and new ones built in the same locations, slum conditions would almost certainly return. Housing accommodations in the midst of the smoke, fumes, noise, and fire hazards of maritime and industrial activity naturally and usually retrogress to slums. At the same time, commercial, industrial and maritime activity is the lifeblood of Portland. The redevelopment plan was to take over the titles to these dwellings and the small neighborhood business properties and to resell them with provisions, inserted in the title instruments to run with the land, that the property be used thereafter for commercial and industrial purposes only. Here was a vigorous, somewhat drastic attack upon an acute public problem. The seizure and resale of the properties, grouped to permit use for other than dwellings, was a clear method of serving two purposes, (1) to prevent the recreation of slums and (2) to enlarge the potential activity upon which the city lived. The Supreme Court of Oregon, in an exhaustive opinion, stressing and emphasizing the features of the factual situation, upheld the statute.

The same sort of condition existed in the *Shenck* case.[33] The project area was the heart of the downtown commercial area of Pittsburgh. The growth of the city from a small town on the triangle between the two rivers left village streets to serve the needs of a great commercial metropolis, and dwellings remained in the district. Inevitably slums arose in those dwelling conditions. The proposed redevelopment plan was to take those properties, build a great park, replat the streets, and erect three 18-story office build-

[32] *Foeller* v. *Housing Authority of Portland*, 256 P.2d 752 (Ore. 1953).
[33] *Schenck* v. *City of Pittsburgh*, 364 Pa. 31, 70 A.2d 612 (1950).

ings. Here again were two purposes, the conclusive prevention of a return of slums to this area and the enlargement of the activity upon which the economic life of the public depended. The Supreme Court of Pennsylvania upheld the plan, and the federal courts did likewise.

In *Zurn v. City of Chicago*[34] a different problem was presented. The statute there involved, the Supreme Court of Illinois said, "is purely an act for slum clearance and rehabilitation of slum and blight areas", and again it said, "The sole basis for the public use is slum clearance and the rehabilitation of slum and blight areas." The court noted that "Slum and blight areas are defined in section 3 as those urban districts in which a major portion of the housing is detrimental to the health, safety, morality or welfare of the occupants by reason of age, dilapidation, overcrowding, faulty arrangement, lack of ventilation, light or sanitation facilities, or any combination of these factors."[35] Within this purpose of slum clearance the court upheld the power of eminent domain.

It is said that the Supreme Court in *Burt* v. *Pittsburgh*[36] sustained the view which the Government takes upon this phase of the matter before us. But we do not find that conclusion in that case. That controversy concerned the same problem, the same area in downtown Pittsburgh, that was considered in *Schenck, supra*. It was presented to a three-judge federal court, and that court, in a two-paragraph opinion,[37] recited (1) that the validity of the statute[38] under the constitution of the State of Pennsylvania had been upheld by the Supreme Court of Pennsylvania in two cases, citing Schenck and the *Belovsky* case,[39] and (2) that there was nothing in the complaint or in the exhibits attached thereto which indicated that the statutes themselves or the action of the constituted authorities in carrying them out violated the plaintiff's rights under the fed-

[34] 383 Ill. 114, 50 N.E.2d 18 (1945).
[35] *Id.*, 50 N.E.2d at 23.
[36] 340 U.S. 802 (1950).
[37] *Burt* v. *Pittsburgh*, Civil No. 8706, W.D.Pa., April 25, 1950.
[38] *Urban Redevelopment Law*, *supra* note 17.
[39] *Belovsky* v. *Redevelopment Authority*, 357 Pa. 329, 54 A.2d 277 (1947).

eral Constitution. Thereupon the court dismissed the complaint. The Supreme Court affirmed upon motion, without opinion, citing *United States* ex rel *T. V. A.* v. *Welch*, *supra*. In the latter case the Court had pointed out that it had never held invalid a state statute authorizing the taking of private property for public uses which the supreme court of the state had upheld. It must be this section of the *T. V. A.* opinion which the Court had in mind in citing the *Burt* case, since the remainder of that opinion dealt with the constitutional powers of a federal agency under a federal statute.

In the *Belovsky* case, cited by the three-judge court in *Burt*, the Supreme Court of Pennsylvania held that the fundamental purpose of the Housing Authorities Act, which it had upheld as a slum clearance act,[40] and the Urban Redevelopment Law "was the same, namely, the clearance of slum areas",[41] and that in the Urban Redevelopment Law there was "only the one major purpose of the elimination and rehabilitation of the blighted sections".[42] The court pointed out that "the law actually requires that property be taken by eminent domain only to the extent reasonably required for the purpose for which the power is exercised".[43]

Thus the utmost held by the recent redevelopment cases is that meeting a compelling community economic need is a public purpose. That is the doctrine of the early Supreme Court cases, such as *Fallbrook*, *Clark* v. *Nash*, and others, *supra*. We do not depart from the thesis of those decisions.

In *People of Puerto Rico* v. *Eastern Sugar Associates*[44] the Court of Appeals for the First Circuit considered a statute of the insular legislature which embodied a far-reaching program of agrarian reform designed to remedy desperate economic conditions existing in the Islands. The

---

[40] *Hornan* v. *Philadelphia Housing Authority*, 331 Pa. 209, 200 Atl. 834 (1938).

[41] *Supra*, 54 A.2d at 281.

[42] *Id.* at 282.

[43] *Id.* at 283.

[44] 156 F.2d 316 (1946), *cert. denied*, 329 U.S. 772, 91 L.Ed. 664, 67 S.Ct. 190 (1946).

act authorized the seizure of large holdings of land used for the raising of sugar, especially that owned by corporations, and the redistribution of the land to individuals in small parcels. The court based the validity of the statute upon the public necessity for solution of the general and acute conditions and upon its conclusion that the statute was "reasonably calculated to deal with these problems." The essence of the opinion conforms to the other decisions we have discussed.

The Government cites cases dealing with such problems as the selection of post-office sites,[45] and the authority of administrative officials to make such selections. They are not pertinent here. The United States has undoubted power to establish post offices, and the use is a public use. The site merely involves a comparative judgment. The question before us concerns power.

Legal support for the Government's position is sought in the authorities upholding the validity of zoning. But we know of no zoning law which provides that, if one's property, now to be in a residential zone, has been used in the past for commercial purposes, its ownership is forfeit. Moreover the power to zone is sharply restricted. The Supreme Court said in *Nectow* v. *Cambridge*,[46] cited in *Devereux Foundation* v. *Lea*:[47]

> "The governmental power to interfere by zoning regulations with the general rights of the land owner by restricting the character of his use, is not unlimited, and other questions aside, such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals, or general welfare. *Euclid* v. *Ambler Co., supra* [272 U. S.] p. 395."

And in *Seattle Trust Co.* v. *Roberge*[48] the Court said: "Zoning measures must find their justification in the police power exerted in the interest of the public."

This brings us to consider the redevelopment plan before us. It covers about fifteen square city blocks. It lies

[45] *E.g., United States* v. *Carmack, supra.*
[46] 277 U.S. 182, 188, 72 L.Ed. 842, 48 S.Ct. 447 (1928).
[47] 326 U.S. 686, 90 L.Ed. 403, 66 S. Ct. 89 (1945).
[48] 278 U.S. 116, 120-121, 73 L.Ed. 210, 49 S.Ct. 50 (1928).

within a Census Tract in which slum conditions are said to exist, and it contains properties upon which slum conditions are said to exist. Its western boundary is an irregular line which runs around lots, encompasses some establishments along a street and excludes others on the same side of the same street, moves from east to west as it runs north. It excludes certain properties, and under it certain other properties would be sold back to the present owners or be retained by them. The key to the plan, apart from slum clearance, is the opinion of the Government authorities that residential neighborhoods should be "well-balanced" and that the area should contain housing for all income groups. The plan points out that "redevelopment" will inevitably raise the average income level and make it possible to introduce housing for higher-income families at a later stage in the program. It says that generally the Southwest area "should be predominantly a moderate to lower-income area". The recommendations as to the percentages of the types of accommodations to be built in the area are said to be "based upon a conservative analysis of the present local real estate market." The plan says: "The purpose of redevelopment is to clear the slums and replace them with that pattern of land use most appropriate to the overall development of the community."

No acute housing shortage is to be met. In fact the plan provides for no more residents than presently occupy the area. No pressing economic condition, apart from the slums, is sought to be dealt with by this plan. No purpose of housing for the needy—low-rent housing—is the motivation. No rearrangement of streets is contemplated or provided. The streets throughout Project Area B are exactly the same as are the streets in all parts of the District of Columbia, lettered streets running east and west and numbered streets running north and south, in continuous lines across the entire District. The plan provides that certain streets shall be widened somewhat and that an expressway and a greenway shall be built. The only restrictions as to future use are the requirements as to the type of houses to be built (row, apartment, etc.) and as to the percentage of rentals for the low-income group.

In sum the purpose of the plan, in addition to the elimina-

tion of slum conditions, is to create a pleasant neighborhood, in which people in well-balanced proportions as to income may live. The Government is to determine what conditions are pleasant, what constitutes the "most appropriate" pattern of land use, what is a good balance of income groups for a neighborhood, how many poor people, how many moderately well-to-do people, how many families of two, how many of four, etc., should be provided for in this neighborhood, and what the proper development of a community should be.

Of course the plan as pictured in the prospectus is attractive. In all probability it would enhance the beauty and the livability of the area. If undertaken by private persons the project would be most laudable. It would be difficult to think of a village, town or city in the United States which a group of artists, architects and builders could not improve vastly if they could tear down the whole community and rebuild the whole of it. But as yet the courts have not come to call such pleasant accomplishments a public purpose which validates Government seizure of private property. The claim of Government power for such purposes runs squarely into the right of the individual to own property and to use it as he pleases. Absent impingement upon rights of others, and absent public use or compelling public necessity for the property, the individual's right is superior to all rights of the Government and is impregnable to the efforts of government to seize it. That the individual is in a low-income group or in a high-income group or falls in the middle of the groups is wholly immaterial. One man's land cannot be seized by the Government and sold to another man merely in order that the purchaser may build upon it a better house or a house which better meets the Government's idea of what is appropriate or well-designed.

We hold that Congress did not in the Redevelopment Act confer power to seize property beyond the reasonable necessities of slum clearance and prevention, the word "slum" meaning conditions injurious to the public health, safety, morals and welfare.

If property is seized for the purpose of eliminating or preventing slums within the limitations and in accordance with the rules we have described, the fact that it may be sold

subsequently to private persons does not vitiate the validity of the seizure.

The complaints in the two actions at bar are pitched entirely upon a challenge of the constitutionality of the Redevelopment Act, and, except the issue as to commercial property, no other issue as to the application of the statute to the property of plaintiffs is raised by the pleadings. Therefore, since the statute, as we construe it, is constitutional, we must grant the motion to dismiss.

In the argument by plaintiffs' counsel in support of their motions for summary judgment, reference was made to arbitrary and capricious action by the Planning Commission in fixing the boundary lines of the Southwest Redevelopment Project Area "B" to include the plaintiffs' commercial properties, while excluding other commercial properties on the same street. This issue, however, is not raised by the pleadings. Should the pleadings be amended to include an issue as to whether or not the administrative agency has acted beyond the scope of the statute, as construed in this opinion, in including the plaintiffs' properties within the project area, the case should be heard by one judge for determination of that question.

E. Barrett Prettyman.
Richmond B. Keech.
Edward M. Curran.

Dated November 5, 1953.

Appendix

60 Stat. 790 (1946), D. C. Code § 5-701 (1951):

"It is hereby declared to be a matter of legislative determination that owing to technological and sociological changes, obsolete lay-out, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas, including the use of buildings in alleys as dwellings for human habitation, are injurious to the public health, safety, morals, and welfare, and it is hereby declared to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employ-

ing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in such District; and it is necessary to modernize the planning and development of such portions of such District. The Congress finds that the foregoing cannot be accomplished by the ordinary operations of private enterprise alone without public participation in the planning and in the financing of land assembly for such development; and that for the economic soundness of this redevelopment and the accomplishment of the necessary social and economic benefits, and by reason of the close relationships between the development and uses of any part of an urban area with the development and uses of all other parts the sound replanning and redevelopment of an obsolescent or obsolescing portion of such District cannot be accomplished unless it be done in the light of comprehensive and coordinated planning of the whole of the territory of the District of Columbia and its environs; and that this comprehensive planning and replanning should proceed vigorously without delay; and to these ends it is necessary to enact the provisions hereinafter set forth; and that the acquisition and the assembly of real property and the leasing or sale thereof for redevelopment pursuant to a project area redevelopment plan, all as provided in sections 5-701 to 5-719, is hereby declared to be a public use."

60 Stat. 791 (1946), D. C. Code § 5-702 (1951):

"The following terms, whenever used or referred to in sections 5-701 to 5-719, shall, for the purposes of sec-

tions 5-701 to 5-719 and unless a different intent clearly appears from the context, be construed as follows:

* * *

"(f) 'Low-rent housing' means safe and sanitary housing within the financial reach of families of comparatively low income and, as a guide for the standard of rental to be used as a maximum at the time of the enactment of this law but not necessarily thereafter, it is specified that such housing shall be rented at not more than $13 per room per month, excluding utilities.

* * *

"(h) 'Planning Commission' means the National Capital Park and Planning Commission.

* * *

"(j) 'Project area' is an area of such extent and location as may be adopted by the Planning Commission and approved by the District Commissioners after public hearing as an appropriate unit of redevelopment planning for a redevelopment project separate from the redevelopment projects for other parts of the District of Columbia. In the provisions of this Act relating to lease or sale by the Agency, for abbreviation 'project area' is used for the remainder of the project area after taking out those pieces of property which in accordance with section 7-706(a) shall have been or are to be transferred for public uses.

* * *

"(n) 'Redevelopment' means replanning, clearance, redesign, and rebuilding of project areas, including open-space types of uses, such as streets, recreation and other public grounds, and spaces around buildings, as well as buildings, structures, and improvements, but not excluding the continuance of some of the existing buildings or uses in a project area. For the purposes of sections 5-701 to 5-719, 'redevelopment' also includes the replanning, redesign, and original development of undeveloped areas which, by reason of street lay-out, lot lay-out, or other causes, are backward and stagnant and therefore blighted and for which replanning and

land assembly are deemed necessary as a condition of sound development.

"* * *

"(r) 'Substandard housing conditions' means the conditions obtaining in connection with the existence of any dwelling, or dwellings or housing accommodations for human beings, which because of lack of sanitary facilities, ventilation, or light, or because of dilapidation, overcrowding, faulty interior arrangement, or any combination of these factors, is in the opinion of the Commissioners detrimental to the safety, health, morals, or welfare of the inhabitants of the District of Columbia."

60 STAT. 793 (1946), D. C. CODE § 5-703 (1951):

"(a) The District of Columbia Redevelopment Land Agency is hereby established and shall be composed of five members. * * *"

60 STAT. 793 (1946), D. C. CODE § 5-704 (1951):

"(a) Subject to and in accordance with the procedures, conditions, and other provisions of sections 5-701 to 5-719, the Agency is hereby granted the power to further the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight and for that purpose to acquire and assemble real property by purchase, exchange, gift, dedication, or eminent domain, and including the power to rent, maintain, manage, operate, repair, clear, transfer, lease, and sell such real property, but excluding the power to build new structures thereon (other than the improvements mentioned in section 5-706(i) or the power to enlarge, extend, or make major structural improvements of existing buildings).

"(b) Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with the procedural provisions of sections 16-619 to 16-644. The title to properties acquired under sections 5-701 to 5-719 shall be taken by and in the name

of the Agency and proceedings for condemnation or other acquisition of property shall be brought by and in the name of the Agency."

60 STAT. 794 (1946), D. C. CODE § 5-705 (1951).

"(a) The Planning Commission is hereby directed to make and, from time to time, develop a comprehensive or general plan of the District of Columbia, including the appropriate maps, charts, tables, and descriptive, interpretative, and analytical matter, which plan is intended to serve as a general framework or guide of development within which the various project areas may be more precisely planned and calculated, and which comprehensive or general plan shall include at least a land-use plan which designates the proposed general distribution and general locations and extents of the uses of the land for housing, business, industry, recreation, education, public buildings, public reservations, and other general categories of public and private uses of the land.

"(b) For the exercise of the powers granted to the Agency by sections 5-701 to 5-719 for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

"(1) Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the District Commissioners, and approval thereof by said Commissioners.

"(2) Adoption by the Planning Commission and submission to, and, after a public hearing thereon, approval by the District Commissioners, of the redevelopment plan of the project area which shall contain a site and use plan for the redevelopment of the area, including the approximate locations and extents of the land uses proposed for and within the area, such as public buildings, streets, and other public works and utilities, housing, recreation, business, industry, schools, public and private open spaces, and

other categories of public and private uses. Such plan shall also contain specifications of standards of population density and building intensity. Any such plan may also specify, by means of specification of maximum rentals or other basis, the amount or character or class of any low-rent housing for which the area or part thereof is proposed to be redeveloped.

"* * *

"(d) After a project area redevelopment plan shall have been adopted by the Planning Commission and approved by the District Commissioners, the Planning Commission shall forthwith certify said plan to the Agency, whereupon said Agency shall proceed to the exercise of the powers granted to it in sections 5-701 to 4-719 for the acquisition and assembly of the real property of the area. * * *"

60 STAT. 795 (1946), D. C. CODE § 5-706 (1951):

"(a) After the real property in the project area shall have been assembled by the Agency, the Agency shall have the power to transfer to and shall at a practicable time or times transfer by deeds to the United States or to the District of Columbia, or to the appropriate Federal or District public body, department, or agency, those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public uses (other than public housing) falling within the construction or administrative jurisdiction of Federal or District agencies, such as streets and other utilities and works, Federal and District public buildings, public recreational spaces, and schools. * * *

"(b) The Agency shall have the power to lease or sell the remainder of the project area as an entirety to a redevelopment company or to an individual or a partnership. * * *

"(c) Any such lease or sale may be made without public bidding but only after a public hearing, after ten days' public notice, by the Agency upon the proposed lease or sale and the provisions thereof.

"(d) The term of any such lease shall be fixed by the Agency and the instrument of lease may provide for renewals upon reappraisals and with rentals and other provisions adjusted to such reappraisals. Every such lease or sale shall provide that the lessee or purchaser shall carry out or cause to be carried out the approved project area redevelopment plan or approved modifications thereof and that no use shall be made of any land or real property included in the lease or sale nor any building or structure erected thereon which does not conform to such approved plan or approved modifications thereof. * * *

"(e) Until the Agency certifies that all building constructions and other physical improvements specified to be done and made by the purchaser of the area have been completed, the purchaser shall have no power to convey the area, or any part thereof, without the consent of the Agency; * * *.

"(f) In lieu of the lease or sale of a project area as an entirety, the Agency shall have the power to lease or sell parts of such area separately to individuals, partnerships, or redevelopment companies. * * *

"* * *

"(h) The Agency may itself demolish any existing structure or clear the area or any part thereof, or may specify the demolition and clearance to be performed by a lessee or purchaser within a reasonable time after such lease or purchase. The Agency may specify a reasonable time schedule and reasonable conditions for the construction of buildings and other improvements by a lessee or purchaser: * * *."

60 Stat. 797 (1946), D. C. Code § 5-707 (1951):

"(a) Prior to approval by the District Commissioners, pursuant to subparagraph (2) of section 5-705(b), of any redevelopment plan, the District Commissioners shall satisfy themselves (and shall so state at the public hearing required by such subparagraph) that decent, safe, and sanitary housing, substantially equal in quantity to the number of substandard dwelling

units to be removed or demolished within the project area, under the proposed redevelopment plan, are available or will be provided (by construction pursuant to the redevelopment plan, or otherwise) in localities, and at rents or prices, within the reach of the low-income families displaced or to be displaced (temporarily or permanently), pursuant to the redevelopment plan, from the project area."

63 STAT. 441 (1949), D. C. CODE § 5-717a (1951):

"• • •

"(g) It is the purpose and intent of this section to authorize the District Commissioners and the appropriate agencies operating within the District of Columbia to do any and all things necessary to secure financial aid under title I of the Housing Act of 1949. The District of Columbia Redevelopment Land Agency is hereby declared to be a local public agency for all of the purposes of title I of the Housing Act of 1949. • • •"